~~Not dec~~

Reversed

Bradley J.
wrote

2nd Day
Submitted

March 21,

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~426.~~ 191

THOMAS D. MARSHALL, APPELLANT,

VS.

HENRY KNOX AND E. E. NORTON, ASSIGNEES OF NATHAN G. SMITH.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED NOVEMBER 27, 1871.

Dec. 9, 1872

SUPREME COURT OF THE UNITED STATES.

No. 426.

THOMAS D. MARSHALL, APPELLANT,

VS.

HENRY KNOX AND E. E. NORTON, ASSIGNEES OF NATHAN G. SMITH.

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1 Circuit court of the United States for the fifth circuit, and district of Louisiana.

THO'S D. MARSHALL
vs. } No. 5581.
HENRY KNOX ET AL., ASSIGNEES.

Bill of complaint.—Filed April 29th, 1868.

To the judges of the circuit court of the United States for the district of Louisiana:

Thomas Douglas Marshall, of the vicinity of Evergreen, parish of Avoyelles, and a citizen of the State of Louisiana, brings this his bill against Henry Knox and E. E. Norton, (assignees,) of the city of New Orleans, and citizens of the said State of Louisiana; and thereupon your orator complains & says that he is, and has been for several years past, the owner of a plantation situated in said parish of Avoyelles, in said State, known as the Walnut Grove plantation, having about five hundred
acres of clean land upon the same; and that on or about the
2 seventh day of February, A. D. 1867, said Nathan G. Smith and
one Henry W. Fuller, both citizens of Louisiana, composing a particular partnership, by a written instrument under seal bearing the said date and signed by them, leased of and from petitioner, and took to farm as lessees, said plantation, at the yearly rent of six dollars per acre, making a total rent of three thousand dollars per annum, payable half-yearly, viz., one-half on the first day of January, and the other half on the 31st day of December, of each rented year; which said lease was to continue for the term of three years, and end on the 31st day of December, A. D. 1869; all of which will more fully appear by reference to Exhibit A.

Your orator further shows that said Smith and Henry W. Fuller took immediate possession of said plantation, as lessees under said contract of lease, and cultivated the same during the year A. D. 1867, and brought upon the same the following among other property belonging to said part-
nership, viz: one horse, twenty-one mules, one wagon, one cart,
3 eighteen plows, four harrows, twelve hoes, three shovels, six spades,
five axes, currycombs, one set of blacksmith tools, one carriage, two lamps, twelve pairs of boys' shoes, one buggy-harness, two sets planters' harness, two pairs boys' boots, sixteen pairs brogans, fifteen pairs boots, five woolen coats, eight linen coats, five pounds of thread, one gin-band, one pair scales, and one lot of sundries, estimated at the sum of twenty-six hundred and thirteen dollars, including 1,000 bundles of fodder and forty bushel' of corn.

Your orator further represents that, by the law of Louisiana, he had the lessor's privilege and pledge upon all of said property above described for the payment of his rent; and finding that said partners, Smith & Fuller, had neglected to pay the said rent due by them to your orator, instituted, on or about the 4th day of January, 1868, an action against the said firm of Smith & Fuller in the seventh district court in and for the parish of Avoyelles, being No. 5063 of the same, for the recovery of fourteen hundred dollars of the rent which had fallen due as the last instalment of A. D. 1867; and exercising his right of detention,
privilege, and pledge as lessor, caused the property hereinabove
4 described to be provisionally seized in order that the same might
be sold under the judgment of said district court to be held in and for said parish of Avoyelles, in said State, to pay said rent. Your ora-

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1 Circuit court of the United States for the fifth circuit, and district of Louisiana.

THO'S D. MARSHALL
vs.
HENRY KNOX ET AL., ASSIGNEES. } No. 5581.

Bill of complaint.—Filed April 29th, 1868.

To the judges of the circuit court of the United States for the district of Louisiana:

Thomas Douglas Marshall, of the vicinity of Evergreen, parish of Avoyelles, and a citizen of the State of Louisiana, brings this his bill against Henry Knox and E. E. Norton, (assignees,) of the city of New Orleans, and citizens of the said State of Louisiana; and thereupon your orator complains & says that he is, and has been for several years past, the owner of a plantation situated in said parish of Avoyelles, in said State, known as the Walnut Grove plantation, having about five hundred acres of clean land upon the same; and that on or about the
2 seventh day of February, A. D. 1867, said Nathan G. Smith and
one Henry W. Fuller, both citizens of Louisiana, composing a particular partnership, by a written instrument under seal bearing the said date and signed by them, leased of and from petitioner, and took to farm as lessees, said plantation, at the yearly rent of six dollars per acre, making a total rent of three thousand dollars per annum, payable half-yearly, viz., one-half on the first day of January, and the other half on the 31st day of December, of each rented year; which said lease was to continue for the term of three years, and end on the 31st day of December, A. D. 1869; all of which will more fully appear by reference to Exhibit A.

Your orator further shows that said Smith and Henry W. Fuller took immediate possession of said plantation, as lessees under said contract of lease, and cultivated the same during the year A. D. 1867, and brought upon the same the following among other property belonging to said partnership, viz: one horse, twenty-one mules, one wagon, one cart,
3 eighteen plows, four harrows, twelve hoes, three shovels, six spades,
five axes, currycombs, one set of blacksmith tools, one carriage, two lamps, twelve pairs of boys' shoes, one buggy-harness, two sets planters' harness, two pairs boys' boots, sixteen pairs brogans, fifteen pairs boots, five woolen coats, eight linen coats, five pounds of thread, one gin-band, one pair scales, and one lot of sundries, estimated at the sum of twenty-six hundred and thirteen dollars, including 1,000 bundles of fodder and forty bushel' of corn.

Your orator further represents that, by the law of Louisiana, he had the lessor's privilege and pledge upon all of said property above described for the payment of his rent; and finding that said partners, Smith & Fuller, had neglected to pay the said rent due by them to your orator, instituted, on or about the 4th day of January, 1868, an action against the said firm of Smith & Fuller in the seventh district court in and for the parish of Avoyelles, being No. 5063 of the same, for the recovery of fourteen hundred dollars of the rent which had fallen due as the last instalment of A. D. 1867; and exercising his right of detention, privilege, and pledge as lessor, caused the property hereinabove
4 described to be provisionally seized in order that the same might
be sold under the judgment of said district court to be held in and for said parish of Avoyelles, in said State, to pay said rent. Your ora-

tor further shows that the first instalment of the rent of A. D. 1868, is now also due, making $3,900 now due, and $4,500 to fall due, and all affecting said property-pledge.

Your orator further represents that, after he had instituted his said suit against said firm, and service of process had been made upon both said Smith and said Henry W. Fuller in the only court having jurisdiction over them and said property, which said sole jurisdiction is continued over said Fuller, the said Nathan Smith, whilst said suit was still pending, filed a petition in bankruptcy in the district court of the United States for the district of Louisiana, being No. 136 of said court; and thereupon the said Henry Knox and E. E. Norton have taken upon themselves to act as assignees in said bankruptcy, and as such assignees they took a rule in said United States district court upon
5 your orator and J. J. Ducoté, sheriff of said parish, to show cause,
among other things, on the 25th day of Feb'uary, A. D. 1868, why the said sheriff, having said property in his possession, should not deliver said property, or the proceeds thereof, to said assignees, and abide such other order of said district as might be deemed lawful. Whereupon such proceedings were had (although said rule was resisted by your orator) as to make said rule absolute on or about the day of April, A. D. 1868.

And your orator, feeling himself aggrieved by such determination of said district court, by which he will be divested of his pledge and possession of said property, rightfully his by virtue of said contract of lease and said law of Louisiana under which said contract was made, and also deprive' of the benefit of his said suit at law, instituted against the said firm, which will be defeated by said decree, not only as to said Smith's eventual interest in said property, but also as to the interest of said Fuller and the firm therein, and as to its complete jurisdiction
6 over said Fuller and the costs incurred in that behalf, he, your
orator, and said Ducoté, applied to said district court sitting in bankruptcy, for an appeal to your hon. court, but the same coming to the ears of said Knox & Norton, assignees, they by counsel opposed before said district court in bankruptcy the allowance of an appeal from said decree upon said rule, and they were sustained by said court and your orator was thereby deprived of all redress in said proceeding, there being no circuit judge of the United States yet assigned to this circuit to whom he could apply for an allowance of appeal. (A.)

Your orator further shows that his privilege, pledge, and right of detention upon said property as lessor, for the rent due and to fall due, is superior to the right of any and all other persons, and he cannot justly be deprived of the same, either as against said partnership firm or the said Henry W. Fuller.

Your orator further represents that he has offered to said assignees to give them a bond to protect all persons, creditors of said Smith, who may have any rights upon said property superior to your orator, if any such rights can exist*s*, and requested them to permit your orator
7 to proceed with his said suit in said district court of the parish of
Avoyelles, against said Fuller and said property, subject to said right of privilege and pledge for the amount of rent due, and to fall due. (B.)

And your orator had well hoped that no disputes would have arisen touching your orator's right to proceed in his said suit against said partnership property, and his right to enforce his pledge upon the same not only to the extent of fourteen hundred dollars due upon said lease at the commencement of said suit for the last year, but also for the further sum of fifteen hundred dollars, now due on the present year, viz, to the extent of twenty-nine hundred dollars now due upon the same, but that the said defendants have complied with the reasonable request of your orator, as in conscience and equity they ought.

But now so it is, may it please your honors, that said Knox & Norton absolutely refuse to comply with said request, and continuing now to wrong and injure your orator in the premises, threaten to apply to the
said district court in bankruptcy for some process to deprive said
8 sheriff and your orator of all right of detention and control over
said partnership property, and said State court of all jurisdiction over the same, not only as to said Smith, but also as to the said Fuller; all of which actings and doings and pretences are contrary to good conscience, and tend to the manifest wrong, injury, and oppression of your orator in the premises. In consideration whereof, and forasmuch as your hon. court is invested with a general superintendance and jurisdiction of all cases and questions arising under the act of Congress, approved March 2d, 1868, (D.)

And your orator is entirely remidiless in the premises, according to the strict rules of the common law, and can only have relief in equity, where matters of this nature are properly cognizable and relievable: To the end therefore, that the said defendants may, if they can, show cause why your orator should not have the relief hereby prayed, and may upon their several and respective corporal oaths, and according to
the best and utmost of their several respective knowledge,
9 remembrance, information, and belief, full, true, direct, and per-
fect answer make (C) to such of the several interrogatories hereafter numbered and set forth, as by the note hereunder written they are required to answer, that is to say:

1st. Whether they have not had in their possession the duplicate or or original of a contract of lease of said Walnut Grove plantation, bearing date 7th day of February, A. D. 1867, signed by your orator, said Henry W. Fuller, and N. G. Smith, and whether the annexed exhibit, marked "A," is not a true copy of the same.

2d. Whether they have not threatened to take said property herein described out of the custody of the said sheriff of the parish of Avoyelles, where the same now is, and that said defendant may be restrained and prohibited by your hon. court by a writ of injunction from proceeding under said decree, and from taking possession of said property, or interfering with the same, and that they be directed, if they have any
pretentions to any portion of the residuary interest of said bank-
10 rupt in said property under seizure, to make themselves parties
to said suit in said parish of Avoyelles, where the cause can be heard, contradictorily with said Fuller, and to assert said right in said district court of the parish of Avoyelles, and that your orator be permitted, without hinderance from said assignees, to detain and subject said property to the payment of said rent due and to fall due under said contract of lease, and should any of said property fall into the hands of said Knox and Norton, assignees, that they be ordered to deliver the same to your orator, (and account to your orator for the full amount of the proceeds of such of said property as they may dispose of,) (E,) and for such further and other relief in the premises as the case shall require, and to your honors shall seem meet.

May it please your honors to grant unto your orator not only the most gracious writs of injunction, issuing out of and under the seal of this hon. court, to be directed to said Henry Knox and E. E. Norton, to restrain them from taking any proceedings upon said decree

11 upon said rule, and from intermeddling and interfering with the possession of said property, and the proceedings of said district court in and for the parish of Avoyelles, touching any of the matters in question, but also the most gracious writs of subpœna of the United States of America to be directed to the said Henry Knox and E. E. Norton, and the rest of their confederates when discovered, thereby commanding them and every one of them at a certain day, and under a certain pain therein to be specified, personally to be an' appear before your honors in this hon: court, and then and there to answer all and singular the premises, and to stand to, perform, and abide such order and decree therein as to your honors shall seem meet. And your orator shall ever pray.

(Signed) By RACE, FOSTER & E. F. MERRICK,
Solicitors for Plaintiff.

NOTE.—Both of said defendants are required to answer said first and second interrogatories.

12 Edwin F. Merrick, one of the solicitors of the plaintiff and complainant Thomas D. Marshall, personally appear', and made oath that said Marshall is absent from the city of New Orleans, at his residence in said parish of Avoyelles, more than two hundred miles distant; that he, said Merrick, has read said bill, subscribed by his said firm, and knows the contents thereof, and that the same is true according to the best of his information and belief.

(Signed) E. T. MERRICK.

Sworn to and subscribed April 29th, 1868, before me.

(Signed) F. B. VINOT, *D'y Cl'k.*

Reserving all rights, we hereby accept service hereof and waive process of subpœna.

New Orleans, April 29th, 1868.

(Signed) A. B. LONG,
Att'y for Henry Knox, Assignee.
(") H. D. STONE,
Att'y for Assignees.

Received January 3d, 1870, the original lease offered by plaintiff May 4th, 1868. Said lease is same as shown by Exhibit A, only it s stamped $7.00—received to send with commission.

(Signed) RACE, FOSTER & E. T. MERRICK.

13 *Copy of Exhibit A, referred to in the foregoing bill, and filed June 6th,* 1868.

This indenture, made this 7th day of February, A. D. 1868, between Thomas D. Marshall, of Avoyelles Parish, and State of Louisiana, of the first part, and Nathan G. Smith and Henry W. Fuller, of the aforesaid parish and State, of the second part, witnesseth:

That the said party of the first part has leased and rented, and by these presents doth grant *a* demise unto the said Nathan G. Smith and Henry W. Fuller, of the second part, a tract of land lying on the west side of Bayou Bœuf, known as the Walnut Grove plantation, and said to contain five hundred (500) acres of cleared land, with all the appurtenances belonging thereto, and buildings thereon, and the right and

privilege of using whatever timber may be necessary for the use of said party of the second part, in the occupation, cultivation, and improvement of said premises, for the term of three years, commencing
14 on the first day of December, 1869, for and in consideration of the sum of six dollars per acre, yearly rent, payable annually in two equal payments, the first payment to be made on the first day of January and the second payment to be made on the thirty-first day of December of each rental year. And the said party of the second part do agree that on the expiration of said term the said premises shall be returned in as good order and condition as when received, reasonable use and wear thereof and damage by the elements excepted. The right of way is reserved by the lessor for the purpose of procuring wood & timber. And the said party of the first part does covenant and agree that said party of the second part, upon paying the said yearly rent, shall and may peaceably and quietly have, hold, and enjoy the said demised premises for and during the term aforesaid.

In witness whereof we have set our hands and seals this 7th day of February, 1867.

(Signed) THO'S D. MARSHALL. [L. S.]
(") HENRY W. FULLER. [L. S.]
(") N. G. SMITH. [L. S.]

Signed, sealed, & delivered in presence of—
15 (Signed) S. J. FULLER.
(") JOHN MORRIS.

Notice of application for injunction.—Filed April 29th, 1868.

United States circuit court.

THOMAS D. MARSHALL
vs.
HENRY KNOX ET AL., ASSIGNEES.
} No. 5581. In chancery.

Take notice that this honorable court will be moved for and on behalf of the complainant, on the 4th day of May, A. D. 1868, or so soon thereafter as counsel can be heard, that the defendants, Henry Knox and E. E. Norton, may be inhibited and restrained from taking any proceedings under the decree rendered by the district court of the United States for the district of Louisiana, in the matter of the bankruptcy of Nathan G. Smith, No. 136, on the rule taken by said defendants as assignees, tending to deprive the seventh judicial district court for the parish of Avoyelles and its officers of the custody of the horse
16 and mules and other property more fully described in the bill of complaint, provisionally seized at the suit of complainant in said last-mentioned district court, against said Nathan G. Smith, being cause No. 5063 of said court, and restrained from intermeddling or any manner interfering with complainant's right of pledge, detention, and privilege upon said property as against said Smith and Fuller, and with complainant's said suit at law, or in respect of the matter mentioned in the complainant's bill of complaint, or any of them, until the further order of this court.

Dated at the city of New Orleans this 29th day of April, A. D. 1868.

(Signed) RACE, FOSTER & E. T. MERRICK,
Solicitors for Complainant.

To Messrs. HENRY KNOX & E. E. NORTON,
Assignees.

Service accepted for said Knox and Norton of the above notice, Apri. 29th, 1868.

(Signed) H. D. STONE,
(") A. B. LONG,
Att'ys for Assignees.

17 *Note of evidence.—Filed May 4th*, 1868.

Circuit court of the United States, district of Louisiana.

THOS. D. MARSHALL
vs.
HENRY KNOX & ALS., ASS'EES. } No. 5581.

Plaintiff offered Doc'ts A & B, No. 136, in bankruptcy of the U. S. dist. court for the dist. of La.

Document A, No. 136.—*Filed May 4th*, 1868.

Seventh dist. court, parish of Avoyelles.

THOMAS D. MARSHALL
vs.
SMITH & FULLER. } No. 5063.

Petition.—Filed January 4th, 1868.

To the honorable the judge of the 7th district court, holding sessions in and for the parish of Avoyelles, State of Louisiana:

The petition of Thomas D. Marshall, a resident of the parish of Avoyelles, State of Louisiana, most respectfully represents: That 18 Nathan G. Smith and Henry W. Fuller, both of the above-named parish & State are justly and truly indebted to your petitioner in the sum of three thousand dollars, subject to a credit of fifteen hundred dollars, in December, 1867, leaving a balance now due of fourteen hundred dollars, with five per cent. per annum interest from the 1st day of January, 1868.

For this, to wit, that on the 7th day of February, 1867, he by written contract leased to said Smith & Fuller his plantation lying and being on the west side of Bayou Bœuf, known as the Walnut Grove plantation, and said to contain five hundred acres, in the parish of Avoyelles, which is more particularly described by reference to a copy of the act of lease, which is hereto annexed and filed herewith, the original being in the possession of the lessees, for the sum of three thousand dollars, being at the price of six dollars per acre, and which lease was to remain for three years, provided the said yearly rent of three thousand dollars, payable annually in two equal payments, were made, the first payment on the 1st day of January, 1867, and the second payment on the 31st day of December, 1867.

19 That the said Fuller & Smith entered upon said plantation and made a crop of cotton, corn, & potatoes, &c., in 1867; that by law he has the lessor's privilege on all the furniture placed in the dwelling-house on said plantation as well on the crop raised on the plantation, and also on all the working-stock and other property placed on said place by the said Smith & Fuller.

That petitioner has good reasons to bel*ei*ve that said lessees will remove the furniture & property now on said plantation upon which he has a lien & privilege from said premises, and that he may be deprived thereby of his said lien.

Petitioner alleges amicable demand without effect.

Wherefore he prays that a writ of provisional seizure issue, directed to the sheriff of the parish of Avoyelles, commanding him to seize and take into his possession the furniture in the house on said plantation, the crop*t* of cotton, corn, potatoes, &c., raised on said plantation * and all the working-stock, farming instruments, and other property that may be found on said plantation,* cattle, &c., to an amount sufficient to pay the amount due petitioner for the rent of said place for the year 1867, and to hold the same subject
to the decision of this case.

This reference approved.
F. A. WOOLFLEY, *Cl'k.*

20 That said Smith & Fuller be cited to appear and answer to
this petition, and be adjudged to pay petitioner the said sum of three thousand dollars & interest, subject to the credits of sixteen hundred dollars for the rent of said place for 1867, now due and that his lessor's privilege & lien be recognized, and the property sold to pay and satisfy said judgment which petitioner may obtain on the decision of the suit. He prays for costs & general relief, &c.

(Signed) WADDILL & BARBIN,
Att'ys for Petitioner.

STATE OF LOUISIANA,
Parish of Avoyelles :

Before me, the undersigned authority, person*na*lly appeared Thomas D. Marshall, who having been duly sworn, makes oath that the allegations in the foregoing petition are true, that the debt herein claimed of three thousand dollars, subject to the credits of sixteen hundred dollars, with five per cent. interest on the balance, (fourteen hundred
dollars,) from 1st January, 1868, is really due & owing as stated
21 in the petition, and that he has good reasons to bel*ei*ve that said
Nathan Smith & Henry W. Fuller will remove the furniture and property on which the petitioner has his lien and privilege out of the premises and off of said plantation, whereby he may be deprived of his privilege.

(Signed) THOS. D. MARSHALL.

Sworn to before me on this 4th day of January, 1868.
J. J. GOUDEAU, *Clerk.*

Let a writ of provisional seizure issue as prayed for in the foregoing petition.

Clerk's office, Avoyelles, this 4th January, 1868.
(Signed) J. J. GOUDEAU, *Clerk.*

Copy of contract.—Filed 4th January, 1868.

This indenture, made this seventh day of Feb'uary, A. D. 1867, between Thomas D. Marshall, of Avoyelles, Parish and State of Louisiana, of the first part, and Nathan G. Smith and Henry W. Fuller, of the
aforesaid parish and State, of the second part, witnesseth :
22 That the said party of the first part has leased and rented,
and by these presents doth grant *a* demise unto the said Nathan G. Smith & Henry W. Fuller, of the second part, a tract of land lying on the west side of Bayou Bœuf, known as the Walnut Grove

plantation, and said to contain five hundred (500) acres of cleaned land, with all the appurtenances belonging thereto, and buildings thereon, and the right and privilege of using whatever timber may be necessary for the use of said party of the second part, in the occupation, cultivation, and improvement of said premises for the term of three years, commencing on the first day of January, 1867, and ending on the 31st day of December, 1869, for and in consideration of the sum of six dollars per acre, yearly rent, payable annually in two equal payments; the first payment to be made on the first day of January, and the second to be made on the thirty-first day of December of each rental year; and the said party of the second part do agree that, on the expiration of said term, the said premises shall be returned in as good order and condition as when received, reasonable use and wear thereof and damage by the elements excepted.

23 The right of way is reserved by the lessor for the purpose of procuring wood and timber; and the said party of the first part does covenant and agree that said party of the second part, upon paying the said yearly rent, shall and may peaceably and quietly have, hold, and enjoy the said demise' premises for and during the term aforesaid.

In witness whereof we have set our hands and seals this seventh day of Feb'uary, 1867.

(Signed) THO'S D. MARSHALL. [L. S.]
(") HENRY W. FULLER. [L. S.]
(") N. G. SMITH. [L. S.]

Signed, sealed, & delivered in presence of—
(Signed) S. J. FULLER.
(") JOHN MORRIS,

[Stamped with six-cents internal revenue, & cancelled.]

Citation.

District court, parish of Avoyelles, the State of Louisiana.

T. D. MARSHALL
vs. No. 5063.
SMITH & FULLER.

To Nathan G. Smith, of the parishof Avoyelles:

24 You are hereby cited to appear in the office of the clerk of said court, in the town of Marksville, in the parish aforesaid, and comply with the demand contained in petition, of which a copy accompanies the citation, or deliver your answer thereto, in writing, in twelve days after the service hereof.

Witness the Hon. W'm H. Cooley, judge of the said court, this 4th day of January, A. D. 1868.

[SEAL.] (Signed) L. P. NORMAND, *D'y Clerk.*

Sheriff's return.

Received, January 4th, 1868, and on the 6th day of same month & year I served certified copies of citation & petition on Nathan G. Smith, in person.

(Signed) O. P. EDWARDS,
D'y Sheriff.

Citation.

District court, parish of Avoyelles, the State of Louisiana.

T. D. Marshall vs. Smith & Fuller. } No. 5063.

To Henry W. Fuller, of the parish of Avoyelles:

25 You are hereby cited to appear in the office of the clerk of said court, in the town of Marksville, in the parish aforesaid, and comply with the demand contained in the petition of which a copy accompanies the citation, or deliver your answer thereto, in writing, in twelve days after the service hereof.

Witness the Hon. W'm H. Cooley, judge of the said court, this 4th day of January, A. D. 1868.

[SEAL.] (Signed) L. P. NORMAND, *D'y Clerk.*

Sheriff's return.

Received, January 4th, 1868, and on the 6th day of same month & year I served certified copies of citation and petition on Henry W. Fuller, at his domicil or usual place of residence, in this parish, by leaving the same with a person apparently above the age of fourteen years, residing there and known to me by the name of Nathan G. Smith, said H. W. Fuller being absent at the time.

(Signed) O. P. EDWARDS, *D'y Sheriff.*

Writ of provisional seizure.

District court, parish of Avoyelles.

26 The State of Louisiana to the sheriff of the parish of Avoyelles, greeting:

Whereas Tho's D. Marshall, a resident of the parish of Avoyelles, State of Louisiana, has filed in the office of the clerk of this court a certain petition of complaint against Nathan G. Smith and Henry W. Fuller, also residents of the parish of Avoyelles, praying in said petition, among other things, that the court may grant him an order of provisional seizure directed to the sheriff of the parish of Avoyelles, commending said officer to seize and detain certain property, mentioned and specified in said petition;

And whereas the court has, by its order of the 4th day of January, 1868, granted the prayer of said petition:

Now, therefore, you, the said sheriff, are hereby commanded to seize and detain the furniture in the house on the plantation leased by said Marshall to said Smith and Fuller, situated on Bayou Bœuf, in this parish, known as the Walnut Grove plantation, also the crop of cotton, corn, potatoes, &c., raised on said plantation, and all the 27 working-stock, farming-instruments, and other property that may be found on said plantation, and also the cattle thereon, until otherwise ordered by this court.

And when you shall so have done, that you make due return of your proceedings into our said court, stating in said return the manner you have executed this writ, and answer to such return a true and minute inventory of the property provisionally seized, drawn by you in presence of two witnesses.

By order of this court.

Witness the Honorable W. H. Cooley, judge of the said court, this fourth day of January, one thousand eight hundred and sixty-eight.

[SEAL.] (Signed) J. J. GOUDEAU, *Clerk.*

Sheriff's return.

Received January 4th, 1868, and on the sixth day of same month & year, I served a certified copy of the within writ on Nathan G. Smith in person, and on the same day, I served the same on Henry W. Fuller,
at his domicil or usual place of residence in this parish, by leav-
28 ing the same with a person apparently above the age of fourteen
years, residing there and known to me by the name of Nathan G. Smith, said H. W. Fuller being absent; and, at the same time, I executed within writ, by seizing the following property, to wit:

Twenty-one mules, one horse, one wagon, one horse-cart, one buggy and harness, ten pairs of plantation harness, about forty bushels of corn, about one thousand pounds of fodder, eighteen plows, four harrows, twelve hoes, three shovels, six spades, five axes, one bedstead, one small table, three chairs, one towel-rack, one bureau, two lamps, twelve pairs boys' shoes, two pairs boys' boots, sixteen pairs men's brogans, five woolen coats, eight brown-linen coats, six pounds flax-thread, one lot combs, lace, &c., ten blacking-brushes, one pair platform-scales, one lot curry-combs & brushes, one blacksmith bellows, fifteen pairs men' boots, one gin-band; and at the same time, I gave the defendants due notice of said seizure and took the annexed inventory of the same.

(Signed) O. P. EDWARDS,
D'y Sheriff.

Inventory.

Inventory of the property provisionally seized in the case, T. D.
29 Marshall vs. Smith & Fuller, No. 5063, D. C. A., taken by me,
the undersigned, deputy sheriff, in the presence of the undersigned competent witnesses, to wit:

Twenty-one mules, valued at the sum of twelve hundred & sixty dollars; one horse, valued at the sum of fifty dollars; one wagon, valued at thirty dollars; one cart, valued at fifteen dollars; one buggy & harness, valued at the sum of one hundred dollars; ten pairs plantation harness, valued at twenty dollars; about forty bushels of corn, valued at forty dollars; one thousand pounds fodder, valued at ten dollars; eighteen plows, valued fifty dollars; four harrows, valued at four dollars; twelve hoes, valued at three dollars; three shovels, valued at one $\frac{50}{100}$ dollars; six spades, valued at three dollars; five axes, valued at two $\frac{50}{100}$ dollars; one bedstead, valued at fifteen dollars; one table, valued at two $\frac{50}{100}$ dollars; three chairs, valued at three dollars; one towel-rack, valued at one dollar; one bureau, valued at fifteen dollars; two oil-lamps, valued at three dollars; twelve pairs boys' shoes, valued at nine dollars; two pairs boys' boots, valued at two $\frac{50}{100}$ dollars; sixteen pairs men' brogans, valued at sixteen dollars; five woolen coats,
valued at fifteen dollars; eight linen coats, valued at eight
30 dollars; six pounds of flax-thread, valued at five dollars; one lot
combs, &c., valued at two dollars; ten blacking-brushes, valued

at one dollar; one pair small platform-scales, valued at two $\frac{50}{100}$ dollars; one lot curry-combs & brushes, valued at two dollars; one blacksmith bellows, valued at five dollars; fifteen pairs men' boots, valued at thirty-seven $\frac{50}{100}$ dollars; one gin-band, valued at ten dollars—making the aggregate sum of seventeen hundred and forty-four dollars. ($1,744.00.)

E. & O. ex.

In faith whereof we have affixed our names this 6th day of January, 1868.

(Signed) P. O. EDWARDS,
D'y Sheriff.

Witnesses:
(Signed) JAMES KELLER.
(") O. K. HAWLEY.

Notice of seizure.

STATE OF LOUISIANA,
Parish of Avoyelles:

Seventh district court.

T. D. MARSHALL
vs. No. 5063.
SMITH & FULLER.

31 To Nathan G. Smith and Henry W. Fuller:

Take notice that, by virtue of a writ of provisional seizure issued in the above case, I have seized and taken possession of the following property, to wit:

Twenty-one mules, one horse, one wagon, one cart, one buggy and harness, ten pairs plantation harness, about forty bushel of corn, about one thousand pounds of fodder, eighteen plows, four harrows, twelve hoes, three shovels, six spades, five axes, one bedstead, one small table, three chairs, one towel-rack, one bureau, two lamps, twelve pairs boys' shoes, two pairs boys' boots, sixteen pairs men' brogans, five woolen coats, eight brown-linen coats, six pounds flax-thread, one lot combs, lace, &c., ten blacking-brushes, one pair platform-scales, one lot curry-combs & brushes, one blacksmith bellows, fifteen pairs men' boots.

And the same I shall keep in my possession until otherwise ordered by the court.

Avoyelles, La., January 6th, 1868.

(Signed) O. P. EDWARDS,
D'y Sheriff.

Sheriff's return.

On the 6th day of January, 1868, I served a copy of the within notice on Nathan G. Smith, in person, and, on the same day,
32 served the same on Henry W. Fuller, at his domicil or usual place of residence in this parish, by leaving the same with a person apparently above the age of fourteen years, residing there, and known to me by the name of Nathan G. Smith, said Henry W. Fuller being absent at the time.

(Signed) O. P. EDWARDS,
D'y Sheriff.

Certificate of bankruptcy.

[Form No. 5.]

Adjudication of bankruptcy upon debtor's petition.

In the district court of the United States for the district of

IN THE MATTER OF NATHAN G. SMITH, INDIVIDUALLY, and as a member of the firm of Smith & Fuller, by whom a petition for adjudication of bankruptcy was filed on the 15th day of January, A. D. 1868, in said court, at New Orleans, in said district, on the sixteenth day of January, A. D. 1868, before Don A. Pardee, one of the registers of said court, in bankruptcy.	In bankruptcy. No. 136.

33 I, the undersigned, a register of said court in bankruptcy, upon good proof before me, register as aforesaid, taken, do find that the said Nathan G. Smith, individually, and as a member of the firm of Smith and Fuller, has become a bankrupt within the true intent and meaning of the act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867; and I do hereby declare and adjudge him a bankrupt accordingly.

[SEAL.] (Signed) DON A. PARDEE,
Register in B'k'cy.

True copy of the original on file in my office, January 17th, 1868.
(Signed) K. LOEW, *D'y Clerk.*

STATE OF LOUISIANA,
Parish of Avoyelles:

I hereby certify the foregoing seventeen pages to contain a full, true, and complete transcript of all the records and documents filed in evidence and all the proceedings had up to this date, in the suit before the seventh judicial district court of the parish of Avoyelles, Louisiana, wherein Thomas D. Marshall is plaintiff, and Nathan G. Smith and Henry W. Fuller are defendants.

34 Given under my hand and the seal of said court at Marksville, Avoyelles, this 6th day of Feb'uary, A. D. 1868.

[SEAL.] J. J. GOUDEAU, *Clerk.*

[5-cents int. rev. , affixed & cancelled.]

STATE OF LOUISIANA:

I, William H. Cooley, judge of the seventh judicial district of the State of Louisiana, do hereby certify that J. J. Goudeau, whose genuine signature appears to the above certificate, is at present & was at the date of the certificate above said, the clerk of the district court for the parish of Avoyelles, being the seventh judicial district of the State, and that his certificate above said is in due form.

Feb'uary 18th, 1868.

(Signed) W. H. COOLEY,
Judge 7th Jud. Dist.

DOCUMENT "B,"

(Being Exhibit "A" transcribed at page 13.)

Hearing and submission for application for injunction.—Extract from the minutes April term, 1868.

NEW ORLEANS, *Monday, May 4th,* 1868.

Court met pursuant to adjournment—
Present, Hon. E. H. Durell, district judge.

35 T. D. MARSHALL
vs.
HENRY KNOX & AL., ASSIGNEES. } No. 5581.

The application for an injuunction came on to be heard—Race, Foster & E. T. Merrick, for pl'ff; A. B. Long, for def'ts—when, after hearing the pleadings, evidence, & counsel, the court took time to advise.

Order: Injunction denied.—Extract from the minutes of Thursday, May 14*th,* 1868.

THO'S D. MARSHALL
vs.
HENRY KNOX & AL., ASSIGNEES. } No. 5581.

For reasons orally assigned, it is ordered that the injunction applied for be denied, with costs.

Extract from chancery-order docket.

June rules, 1868. Monday, 1st June, 1868.

Complainant will take notice that the defendants this day filed their joint and several demurrer to the bill of complaint herein.

36 *Demurrer.—Filed June* 1*st*, 1868.

In chancery. United States circuit court for the fifth judicial circuit and district of Louisiana.

THOMAS D. MARSHALL
vs.
HENRY KNOX & AL., ASSIGNEES. } No. 5581.

The joint & several demur'ers of Henry Knox and Emery E. Norton, assignees in bankruptcy of Nathan G. Smith, defendants named in the bill of complaint of Thomas D. Marshall.

These defendants, by protestation not confessing or acknowledging all or any of the matters and things in said complainant's bill contained as true, in such manner and from as the same are therein and thereby set forth and alleged, do demur to said bill, and, for cause of demurrer, show—

1st. That, by said complainant's own showing in his said bill of complaint contained and on the face thereof appearing, he is neither en-

Certificate of bankruptcy.

[Form No. 5.]

Adjudication of bankruptcy upon debtor's petition.

In the district court of the United States for the district of

IN THE MATTER OF NATHAN G. SMITH, INDIVIDUALLY, and as a member of the firm of Smith & Fuller, by whom a petition for adjudication of bankruptcy was filed on the 15th day of January, A. D. 1868, in said court, at New Orleans, in said district, on the sixteenth day of January, A. D. 1868, before Don A. Pardee, one of the registers of said court, in bankruptcy. } In bankruptcy. No. 136.

33 I, the undersigned, a register of said court in bankruptcy, upon good proof before me, register as aforesaid, taken, do find that the said Nathan G. Smith, individually, and as a member of the firm of Smith and Fuller, has become a bankrupt within the true intent and meaning of the act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867; and I do hereby declare and adjudge him a bankrupt accordingly.

[SEAL.] (Signed) DON A. PARDEE,
Register in B'k'cy.

True copy of the original on file in my office, January 17th, 1868.
(Signed) K. LOEW, *D'y Clerk.*

STATE OF LOUISIANA,
Parish of Avoyelles:

I hereby certify the foregoing seventeen pages to contain a full, true, and complete transcript of all the records and documents filed in evidence and all the proceedings had up to this date, in the suit before the seventh judicial district court of the parish of Avoyelles, Louisiana, wherein Thomas D. Marshall is plaintiff, and Nathan G. Smith and Henry W. Fuller are defendants.

34 Given under my hand and the seal of said court at Marksville, Avoyelles, this 6th day of Feb'uary, A. D. 1868.

[SEAL.] J. J. GOUDEAU, *Clerk.*

[5-cents int. rev. , affixed & cancelled.]

STATE OF LOUISIANA:

I, William H. Cooley, judge of the seventh judicial district of the State of Louisiana, do hereby certify that J. J. Goudeau, whose genuine signature appears to the above certificate, is at present & was at the date of the certificate above said, the clerk of the district court for the parish of Avoyelles, being the seventh judicial district of the State, and that his certificate above said is in due form.

Feb'uary 18th, 1868.

(Signed) W. H. COOLEY,
Judge 7th Jud. Dist.

DOCUMENT "B,"

(Being Exhibit "A" transcribed at page 13.)

Hearing and submission for application for injunction.—Extract from the minutes April term, 1868.

NEW ORLEANS, *Monday, May 4th,* 1868.

Court met pursuant to adjournment—
Present, Hon. E. H. Durell, district judge.

35 T. D. MARSHALL
vs.
HENRY KNOX & AL., ASSIGNEES. } No. 5581.

The application for an injuunction came on to be heard—Race, Foster & E. T. Merrick, for pl'ff; A. B. Long, for def'ts—when, after hearing the pleadings, evidence, & counsel, the court took time to advise.

Order: Injunction denied.—Extract from the minutes of Thursday, May 14th, 1868.

THO'S D. MARSHALL
vs.
HENRY KNOX & AL., ASSIGNEES. } No. 5581.

For reasons orally assigned, it is ordered that the injunction applied for be denied, with costs.

Extract from chancery-order docket.

June rules, 1868. Monday, 1st June, 1868.

Complainant will take notice that the defendants this day filed their joint and several demurrer to the bill of complaint herein.

36 *Demurrer.—Filed June 1st,* 1868.

In chancery. United States circuit court for the fifth judicial circuit and district of Louisiana.

THOMAS D. MARSHALL
vs.
HENRY KNOX & AL., ASSIGNEES. } No. 5581.

The joint & several demur'ers of Henry Knox and Emery E. Norton, assignees in bankruptcy of Nathan G. Smith, defendants named in the bill of complaint of Thomas D. Marshall.

These defendants, by protestation not confessing or acknowledging all or any of the matters and things in said complainant's bill contained as true, in such manner and from as the same are therein and thereby set forth and alleged, do demur to said bill, and, for cause of demurrer, show—

1st. That, by said complainant's own showing in his said bill of complaint contained and on the face thereof appearing, he is neither entitled to the protection of this court nor to the benefit of its process for equitable relief and discovery, for the reason that complainant neither appears nor alleges to have complied with the imperative condition precedent to the institution and maintenance of this or any action against an assignee or assignees in bankruptcy, as required by section 14 of an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867, which enacts, in one of its clauses, that "No person shall be entitled to maintain an action against an assignee in bankruptcy for anything done by him as such assignee, without previously giving him twenty days' notice of such action, specifying the cause thereof, to the end that such assignee may have an opportunity of tendering amends, should he see fit to do so." 37

2d. And for further cause of demurrer defendants state that, by complainant's own showing in his said bill of complaint contained, if all the matters and allegations therein contained were true, (which defendants in no wise admit,) complainant is not, by law and in equity, entitled to the relief prayed for, nor to any relief and discovery as against these defendants. 38

Wherefore, for these matters of substance and form, and for divers other defects & causes of demur'ers contained in and appearing on the face of complainant's bill, these defendants do, as aforesaid, demur thereunto, and crave the judgment of this honorable court whether they shall be bound to make any answer thereunto otherwise than as aforesaid; and these defendants pray to be hence dismissed with their costs in this behalf most wrongfully sustained.

(Signed) H. D. STONE,
(") A. B. LONG,
Solicitors for Defendants.

We, the undersigned solicitors for and counsel of the said above-named defendants, Henry Knox and Emery E. Norton, in whose behalf the above demurrer in this cause is interposed, do certify that, in our opinion, the above demurrer to the bill of complaint of Thomas D. Marshall, filed & exhibited by him in this cause, is well founded in point of law.

(Signed) H. D. STONE,
(") A. B. LONG,
Solicitors for Defendants.

39 Emery E. Norton, being duly sworn, on oath doth deposes and says that he is one of the defendants named in the foregoing demurrer, & that the same is not interposed in this cause for the purposes of delay, but that justice may be done.

(Signed) E. E. NORTON, *Assignee.*

Sworn to and subscribed before me this 1st day of June, 1868.

(Signed) F. B. VINOT, *D'y Clerk.*

Alanson B. Long, being duly sworn, on oath doth depose & say, that he is one of the solicitors of Henry Knox, one of the defendants named in the foregoing demurrer; that said Knox is now absent from the State of Louisiana; and that the foregoing demurrer on behalf of said Knox filed in said cause is not interposed for the purpose of delay, but that justice may be done.

(Signed) ALANSON B. LONG.

Sworn to and subscribed before me this 1st day of June, 1868.
(Signed) F. B. VINOT, *D'y Clerk.*

Consent fixing trial of demurrer.—Filed June 20th, 1868.

40 MARSHALL
vs. } No. 5581. Demurrer.
KNOX & NORTON.

United States circuit court. In chancery.

It is agreed that the demurrer in this case be re-assigned for Monday, 22d inst., at 11 a. m.

June 20th, 1868.
(Signed) RACE, FOSTER & E. T. MERRICK,
Sol's for Complainant.
A. B. LONG, *Sol. for Assignee.*

Order: Demurrer overruled.—Extract from the minutes of Monday June 22d, 1868.

THO'S D. MARSHALL
vs. } No. 5581.
HENRY KNOX & AL., ASSIGNEES.

The demurrer filed by defendants was called up—Race, Foster & E. T Merrick, for pl'ff; A. B. Long for def'ts—when, after hearing the pleadings & argument—

Ordered that the said demurrer be overruled with costs.

41 *Answer.—Filed July 1st,* 1868.

United States circuit court. In chancery.

THOMAS D. MARSHALL
vs. } No. 5581.
HENRY KNOX & AL., ASSIGNEES, &C.

To the hon. the judges of the United States circuit court for the fifth judicial circuit, and district of Louisiana:

The joint and several answer of Henry Knox and E. E. Norton, assignees in bankruptcy of Nathan G. Smith, to the bill of complaint of Thomas D. Marshall, or to so much thereof as these defendants are advised it is necessary and proper for them to make answer unto.

These respondents are advised and beleive that said complainant did lease unto the bankrupt N. G. Smith & H. W. Fuller, the Walnut Grove plantation, (so called,) in the parish of Avoyelles, substantially in manner and form as in the bill of complaint stated; that the stock and agricultural implements named by complainant were put upon the
42 said plantation by the said lessee; that the same were seized under writ of provisional seizure issued from the seventh judicial district court in and for the parish of Avoyelles, together with about one thousand bundles of fodder and forty bushels of corn, which were the product of said Walnut Grove plantation for the year 1867.

And, further answering, respondents say that they are advised and believe that at the time said seizure was made said bankrupt was indebted to the said complainant in the sum of only fourteen hundred dollars; and further that then said lessee had a first claim against said lessor for the sum of twelve hundred and twenty dollars, for repairs and permanent improvements to and upon said Walnut Grove plantation, under said lease and during the year 1867, for which sum of $1,220.00 said bankrupt had, and these assignees and respondents have, first set off in law and in equity against the claim of said lessor.

And, further answering, respondents state that they are advised and
bel*ei*ve that said bankrupt employed and hired in the cultiva-
43 tion of said plantation, during the year 1867, certain laborers, to
wit, Austin Muller, James Walker, Lummel Davis, William Ross,
Louis Robinson, Bedore Prieur, Samuel Anderson, Peter Farnier, Abram Washington, Cloris Walker, Thornton Martin, John Abarre, Aleix Bowman, Horace Burgess, Samuel Webb, Elicia Washington, Jane Ross, Melinda Robinson, Lucretia Martin, Elise Robinson, Emma Robinson, Maria Anderson, Peter Farmer, jr., Fred. Williams, Britton West, John Morris; that these several persons, under and by virtue of the laws of Louisiana, had a privilege superior to complainant, especially on the crops produced during the year 1867, as before stated.

And, further answering, respondents say that, on or about the 15th
January, 1868, said Nathan G. Smith, lessee, was adjudicated a bank-
rupt by the hon. the U. S. dist. c't for the dist. of Louisiana; that,
on or about the 12th of Feb'uary, 1868, these respondents were
confirmed assignees of said N. G. Smith, and that since that date
they have ever acted in good faith and according to law
44 towards complainant, as well as the other creditors of said
bankrupt; that complainant never had such claim and privilege
upon said bankrupt's property or any other portion thereof as to entitle him to retain possession thereof or make sale thereof without the superintend*a*nce of these respondents; that under the order of said U. S. dist. c't they have taken possession of all such of said property originally seized in the dist. court of the parish of Avoyelles as they could find and get control of; that a great portion of said property was lost or damaged, to the great injury of the estate which these respondents are administering and by said complainant; that said property so coming into their possession by the order of the U. S. dist. c't they have sold under its further order, and the proceeds thereof they hold subject to distribution and division among the creditors of said bankrupt as said U. S. dist. court may direct.

And, further answering, respondents deny that they have ever ag-
grieved or vexed complainant; that he ever had the privilege claimed,
or is entitled to the relief by him prayed for, and respondents
45 pray that all these matters and things may be heard; that they
have opportunity to prove and maintain all the allegations herein
by them made, as this court may direct; and that they may be hence dismissed with costs and charges in this behalf most wrongfully sustained.

And now said defendants and respondents, for answer to the first interrogatory to them propounded by said complainants, say: To their best knowledge and belief, that they have had in their possession the duplicate or original of lease by complainant mentioned, and that Exhibit "A," annexed to his bill of complaint is a true copy thereof.

To the second interrogatory respondents say that they have never threatened as in said interrogatory mentioned, but have often averred their intention of taking possession of said property under and in compliance with the requisites of law.

(Signed) H. D. STONE,
(") A. B. LONG,
Sollicitors.

46 This defendant, E. E. Norton, on his corporal oath, doth declare that the facts stated in the foregoing answer, so far as the same are therein stated and set forth as from his own knowledge, are each & all severally true, and that, so far as the same are stated from knowledge derived from others, he beleives the same to be true.

(Signed) E. E. NORTON, *Assignee.*

Sworn to and subscribed before me this 1st day of July, 1868.
(Signed) F. B. VINOT, *D'y Clerk.*

Alanson B. Long, being duly sworn, states that he is the attorney-at-law and sollicitor of defendants Henry Knox, and that the facts and allegations stated and set forth in the foregoing answer are true, to the best of his knowledge and belief.

(Signed) ALANSON B. LONG.

Sworn to and subscribed before me this 1st day of July, 1868.
(Signed) F. B. VINOT, *D'y Clerk.*

August rules, 1868.

Extract from chancery-order, docket.

MONDAY, *August 3d*, 1868.

T. D. MARSHALL
vs. } No. 5581.
HENRY KNOX & AL.

47 The defendants are hereby notified that the complainant, by his sollicitors, Race, Foster & E. T. Merrick, has this day filed his exception to the said defendants' answer.

Exception to answer.—Filed August 3d, 1868.

THOMAS D. MARSHALL
vs. } No. 5581.
HENRY KNOX & E. E. NORTON, ASSIGNEES.

U. S. circuit court. In chancery.

Exception taken by said complainant to the insufficient answer of said defendants.

First. For that the said defendants have not, to the best of their knowledge, remembrance, information, and belief, answered and set forth whether said horses, mules, wagon, cart, agricultural implements, carriage, buggy, and other harness, shoes, boots, brogans, coats, thread, gin-band, blacksmith tools, and other personal property described in complainant's bill of complaint, were not the property of said 48 partnership composed of said Fuller & Smith, and whether the same were not all bought upon said plantation, during the year A. D. 1867, by said Fuller & Smith, whereby they all became subject to complainant's said privilege and right of pledge as lessor.

Second. For that said defendants have not, in manner aforesaid, answered and set forth what particular property they have taken possession of, nor what property they have sold, nor to what persons they have sold the same, nor whether some portion of said property has not been left in the custody of said sheriff of said parish of Avoyelles, and what portion has been so left, and what portion has been lost or damaged.

Third. For that said defendants have not, in manner aforesaid, answered whether complainant did not offer to give the said defendants and assignees a bond to protect all persons, creditors of said Smith, who might have any rights upon said property superior to complainants, if any such rights existed, and whether he (said complainant) did not request said defendants & assignees to be permitted to proceed with his said suit in said district court in said parish of Avoyelles.

49 In all which particulars the said complainant excepts to the answer of said defendants as evasive, imperfect, and insufficient, nd humbly prays that said defendants may be compelled to put in a ull and sufficient answer thereto.

(Signed) RACE, FOSTER & E. T. MERRICK,
Sol's for Complainant.

September rules, 1868.

Extract from chancery-order docket.

MONDAY, *September 7th*, 1868.

THOS. D. MARSHALL
vs. } No. 5581.
H'Y KNOX & AL.

On motion of Race, Foster & E. T. Merrick, sollicitors for complainant, it is ordered that the exception to the defendants' answer, herein filed on the 3d of August, 1868, be set down for trial and argument.

Motion and order.—Extract from the minutes of January 11*th*, 1869.

THOS. D. MARSHALL
vs. } No. 5581.
HENRY KNOX & AL., ASSIGNEES.

50 On motion of Race, Foster & E. T. Merrick, attorneys for the pl'ff, ordered that he have leave to file his amended bill.

Motion & order.—Extract from the minutes of January 11*th*, 1868.

THO'S D. MARSHALL
vs. } No. 5581.
HENRY KNOX & AL., ASSIGNEES.

On motion of Race, Foster & E. T. Merrick, attorneys for the pl'ff, ordered that he have leave to file his supplemental bill.

Amendment to original bill & order thereon.—Filed January 11*th*, 1869.

Circuit court U. S., district of Louisiana.

THOMAS D. MARSHALL
vs.
HENRY KNOX ET AL., ASSIGNEES. } No. 5581. In chancery.

Leave of the court being first had and obtained, the complainant
comes and amends his original bill, by inserting on the
51 second line of the fifth page of the original bill, after the word
"appeal" the following: "By all which said proceedings of said district
A. court, hereinbefore recited, your orator alleges that he has
been and is aggrieved;" and on page seven of said bill, after
the words "make to," on the third line thereof, the words "the premises
C. and"; and by inserting after the words "now is," on
the sixteenth line of the same page, the words "and that
said orders of said district court sitting in bankruptcy be reviewed by
this hon. court and rescinded;" and that all on the seventh
E. page of said bill, after the words "your orator," on the thirty-fifth
line thereof be stricken out.

(Signed) By RACE, FOSTER & E. T. MERRICK,
Solicitors for Complainant.

Order.

Let this amendment be filed.
January 9th, 1869.
(Signed) E. H. DURELL, *Judge.*

Supplemental bill.—Filed January 11*th*, 1869.

52 THOS. D. MARSHALL
vs.
HENRY KNOX ET AL., ASSIGNEES. } No. 5581.

To the judges of the circuit court of the United States for the district of Louisiana:

Thomas D. Marshall, of the vicinity of Evergreen, in the parish of Avoyelles and State of Louisiana, and a citizen of the State of Louisiana, brings his supplemental bill against Henry Knox and E. E. Norton, of the city of New Orleans and State of Louisiana, and citizens of the State of Louisiana, an' assignees in bankruptcy of Nathan G. Smith, a bankrupt on his own petition in the district court of said district of Louisiana.

And thereupon your orator complains and says that he filed his original bill against the defendants in this court, April 29th, 1868, wherein he prayed, among other things, for an injunction to restrain said defendants from taking possession of certain property under seizure, subject to your orator's lessor's privilege and pledge as against said Smith and one Fuller, as lessees, and for discovery and account, and for
53 other relief, as stated in said original bill.

And your orator further shows that since the filing of said original bill, and against the continued opposition and remonstrance of your orator, the defendants have taken possession of and received from said sheriff of Avoyelles the greater part or all of said property set forth in the original bill of complaint, subject to your orator's privilege and pledge as lessor, as in original bill set forth, and on or about the twentieth day of May, A. D. 1868, have illegally disposed of said property at an injudicious time, and without the usual and requisite ten days' notices and advertisements, and without any authority from any court, or any person authorized to dispose of or order the sale of the interest of said Fuller or said Fuller & Smith, in and to the same, to sundry persons unknown to your orator, and at prices much below one-half the value of said property. And your orator further shows that if any of said property has been lost or damaged, as pretended, by said defendants, (of which your orator is not sufficiently advised,) the said defendants have occasioned such damage and lost by their unjust 54 interference with said property under seizure and with the process of said district court in said suit in said parish of Avoyelles, and thereby prevented your orator from inforcing his privilege and pledge, and realizing the sums due him from said Fuller & Smith upon said lease, by means whereof said assignees are bound as well to account for whatever of said property may have been lost or damaged after such interference of said assignees by their rule against your orator and said sheriff as for the property taken possession of and sacrificed by said illegal and informal sale.

Your orator further shows that said Fuller has left the State of Louisiana with all his other property, and he is now beyond the process of the courts of Louisiana, and there is no other fund or property within the jurisdiction of the State which can be made available to pay said rent, besides said property provisionally seized and subject to your orator's privilege and pledge.

And your orator further shows that said defendants now pre- 55 tend that said Smith & Fuller were not indebted to your orator in the sums set forth in said original bill for rent, and that they were the creditors of your orator for improvements, and that they are protected by the order of the United States district court for the district of Louisiana, directing the delivery of said property to them, and they pretend that said sale of the same was sufficient, and formal, and that they are entitled to detain the whole of the funds received by them to pay themselves, the clerk, register, and marshal, and their counsel large sums for their supposed trouble, and counsel fees, which they say will more than consume whatever they have received from said sale. Now, your orator avers the contrary to be the fact, and that said property could not lawfully be taken from petitioner's lawful possession under the order of the said district court, or otherwise, without a prepayment of his said rent, and that said Fuller & Smith made no improvements on the property, and that having the right of pledge and privilege upon said property for the payment of said rent due and 56 falling due upon said contract of lease, your orator caused the interest of said Fuller as well as said Smith, in and to said property, subject to your orator's said privilege and pledge, to be provisionally seized according to the laws of Louisiana, as aforesaid, long before the bankruptcy ot said Smith, whereby, having the legal custody by virtue of said seizure, as well as the right of detention of, and lessor's privilege and pledge upon said property, which had never been parted with, neither said Smith and Fuller nor their assignees, and much less the assignee of one of them had the right to take said property out of the custody of the law and deprive your orator of his right of privilege, pledge, and detention of said property which he was exercising and enforcing, without paying him the amount due him, your orator, as rent upon said lease, as well as the amounts of rents to fall due.

And your orator further avers that said pretended sale made by said defendants was illegal, informal, and unjust, among other things, and in addition to those set forth in the original bill, in this, that said assignees had no order of a competent court obtained contradictorily 57 with said Fuller for the sale of his undivided one-half interest in said property, subject to your orator's pledge and privilege, and there was no legal or sufficient order obtained for the sale of said property as the property of said Smith and Fuller, and no legal or sufficient order was obtained for the sale of the supposed interest of said Smith therein, and no notice was given as required by the rules of the court, or as is usual and customary in Louisiana, of the time, place, and terms of sale of like property, and the same was negligently and wilfully sold on one day notice, in a handbill obscurely posted in a country village, in which it was sold without any notice to the class of persons, viz, farmers and planters, who have need for such property, and there was no publication in the newspaper published in said village, or in any newspaper elsewhere, and without the assistance of any officer authorized to make and authenticate public sales of property.

And your orator further avers that he has been aggrieved by the orders of said district court mentioned in his original bill, and 58 by such further actings and doings of the defendants herein set forth; that said defendants are bound in equity and good conscience to account to your orator for the full value of said property, viz, twenty-six hundred and twelve dollars, notwithstanding any pretended sale, loss, damage, or sacrifice of the same since the said unjust interference set forth in this and said original bill, by them with your orator's said rights.

To the end, therefore, that said defendants may, if they can, show why your orator should not have the relief herein and in the original bill prayed, and may under oath and according to the best and utmost knowledge, remembrance, information, or belief, full, true, direct, and perfect answer make to the interrogatories hereinafter numbered and set forth, that is to say:

1st. Whether, since the filing of the original bill, the defendants have not demanded of the sheriff of the parish of Avoyelles, and taken possession of said property set forth in said original bill, and disposed of and sold any, and what part thereof, and to what person or persons they, or their agents, sold each horse, mule, and other article of 59 said property, and the amount they received for each horse, mule, &c., other articles of property, and to set forth a list of the property sold; that said defendants may answer the premises; that said orders of said district court in bankruptcy, set forth in said original bill, be reviewed, revised, and rescinded, and that they, said defendants, be decreed to account to your orator for the full value of said property, notwithstanding any loss, damage, deterioration, or sacrifice of the same since the illegal interference of defendants with your orator's rights in the premises; and further, to pay over unto your orator all such sums of money as your orator may be entitled to have and received by reason of their wrongful doings in the premises, and that an account thereof may be taken under the order and direction of this court; and that your orator may have such other and further relief in the premises as the nature of the case shall require—

May it please your honors to grant unto your orator the most gracious writ of subpœna of the United States of America, to be directed 60 to the said Henry Knox and E. E. Norton, thereby commanding them, and each of them, at a certain day and under a certain pain therein to be specified, personally to be and appear before your honors in this honorable court, and there to answer the premises, and to stand to, perform, and abide such order and decree therein as to your honors shall seem meet. And your orator shall ever pray.

(Signed) By RACE, FOSTER & E. T. MERRICK,
Solicitors for Complainant.

Service accepted of the supplemental bill, and process of subpœna wa'ved, and we agree to answer within the legal delay, to wit, 1st Monday, March, 1869.

(Signed) H. D. STONE,
(") A. B. LONG,
Att'ys to Norton, Assignee.
(") E. WOOLDRIDGE,
Att'y for H. E. Knox.

Order.

Let this supplemental bill be filed.
January 9th, 1869.
(Signed) E. H. DURELL, *Judge.*

61 *Agreement that exceptions be maintained and time allowed to answer.—Filed February 9th, 1869, and from the minutes of same date.*

THO'S D. MARSHALL
vs.
HENRY KNOX & E. E. NORTON, ASSIGNEES. } No. 5581.

It is agreed between the undersigned solicitors that the exception to answer herein, fixed for hearing on the 8th inst., be maintained with privilege to sollicitors for defendants to answer on or before next rule-day.

New Orleans, Feb'y 8th, 1869.
(Signed) A. B. LONG & H. D. STONE,
Solicitors for E. E. Norton, Ass'ee.
(") RACE, FOSTER & E. F. MERRICK,
Solicitors for Complainant.
(") E. WOOLDRIDGE,
Solicitor for Henry Knox.

Amendment to original answer of E. E. Norton, co-assignee.—Filed March 1st, 1869.

United States circuit court. In chancery.

62 THO'S D. MARSHALL
vs.
HENRY KNOX & E. E. NORTON, ASSIGNEES. } No. 5581.

To the honorable the judges of the United States circuit court for the fifth judicial circuit, and district of Louisiana:

The seperate amended answer of E. E. Norton, co-assignee in bankruptcy of N. J. Smith, to the original bill of complaint of Thomas D. Marshall.

First. This defendant answers that according to the best of his knowledge, information, and belief, the horse, mules, wagon, cart, agricultural implements, carriage, mule, harness, shoes, boots, brogans, coats, thread, gin-band, blacksmith tools, &c., described in complainant's bill of complaint, were the property of the special partnership of Smith & Fuller, but whether the same were brought upon said plantation during the year 1867, this defendant has no knowledge or information and therefore neither confesses nor denies the same, but requires strict proof thereof. As to the buggy and harness named by the complainant, this defendant is informed and bel*ei*ves that the same were the sole 63 and sep*e*rate property of Elizabeth B. Fuller, wife of Henry W. Fuller, and were in no manner subject to any claim or lien of complainant.

Second. This defendant sets forth in the supplemental answer filed in even date herewith all the particulars, required and complained of in complainant's exception to original answer filed herein, and he begs leave to refer to the same as a full and explicit answer to said second exception.

Third. The complainant did tender a bond to this defendant and his co-assignee, Henry Knox, for appeal from the decision of the hon. United States district court, in bankruptcy sitting, rendered in the bankruptcy of N. G. Smith, numbered 136 on the docket of said court, which said bond was conditioned "to prosecute his appeal to effect, and answer all damages and costs, and satisfy whatever judg*e*ment may be rendered against him." But defendant has no knowledge nor information that any other land than that above referred to and described was, by complainant, ever tendered to this defendant, either alone 64 or in connection with his said co-assignee, and defendant answers that he has no knowledge nor information that complainant ever requested him or his co-assignee "to be permitted to proceed with his said suit in said district court in said parish of Avoyelles.

(Signed) H. D STONE,
A. B. LONG,
Solicitors of E. E. Norton, Co-assignee.

E. E. Norton, the defendant above named, does hereby make solemn oath that the statements contained in the foregoing amendment to the original answer filed herein, so far as the same are stated of his own knowledge, are true, and that those matters which are stated therein on information and belief are true, according to the best of his knowledge, information, and belief.

(Signed) E. E. NORTON,
Assignee.

Sworn to and subscribed before me this 1st day of March, 1869.

(Signed) D. URBAN,
U. S. Comm.

Answer of E. E. Norton, co-assignee to supplemental bill.—Filed March 1st, 1869.

65 United States circuit court. In chancery.

THO'S D. MARSHALL
vs. } No. 5581.
HENRY KNOX & E. E. NORTON, ASSIGNEES.

To the hon. the judges of the United States circuit court for the fifth judicial circuit, and district of Louisiana:

The seperate answer of E. E. Norton, co-assignee in bankruptcy of N. G. Smith, to the supplemental bill of complaint of Tho's D. Marshall.

This defendant admits the filing of the original bill and its prayer as by complainant charged. This defendant further says that, on or about the 27th day of April, 1868, he did, in the regular and legal discharge of his duties, and in conjunction with his co-assignee, Henry Knox, obtained from the honorable the United States district court for the district of Louisiana, in bankruptcy sitting, a regular, legal, and suffecient order, commanding and authorizing said co-assignees to sell and dispose of the property mentioned in complainant's bill, "at public auction
66 or private sale, at such time and place as they may elect;" that, soon thereafter, said co-assignees sent their agent, one W'm McDaniel, to the parish of Avoyelles, to take possession of said property and sell the same, according to the terms of said order; that said agent proceeded to said parish of Avoyelles, and demanded of J. J. Ducoté, sheriff thereof, to be put in possession of the said property, and thereupon said agent did receive from said sheriff the property described in S'hedule A, hereto annexed and made part hereof, and particularly specified on the first two pages of said s'hedule, being a part of the property described by said complainant as that originally seized at his instance by said Ducoté, sheriff; that the remainder of property originally seized by said sheriff was accounted for by him as lost, dead, or stolen, according to the specifications on the third page of said s'hedule.

That, thereafter, to wit, on or about the 20th day of May, 1868, the said agent of defendants, having first advertised the same in legal, proper, and suffecient manner, proceeded to sell, at auction, a
67 portion of said property so received by him from said Ducoté, sheriff.

That another portion of said property, consisting of certain property offered but unsold and unsalable at just prices at said auction, and certain household goods surrendered by said N. G. Smith, bankrupt, were immediately brought to this city, and are accounted for (with the remainder of said property) on the S'hedule "A," hereto annexed.

And, further answering, this defendant denies each and all the allegations of complainant's bill charging or tending to charge this defendant with unjust, unwise, or illegal procedure, in taking possession of, selling, and holding the above-named property; but this defendant alleges that, in each and all his doings as co-assignee of N. G. Smith, he, acting always in conjunction with his co-assignee, Henry Knox, he has conducted himself legally and properly, and has been prompted only by a desire to thoroughly discharge his duties as co-assignee according to law, under the orders and directions of the U. S. district court, sitting in bankruptcy, and for the best interest of the creditors of said N. G. Smith, bank't.

68 This defendant says that, as he is informed and beleives, said Henry W. Fuller was resident in this State up to about the month of June last; that he is informed and believes that said Fuller has now left the State, but whether he has left property in this, this defendant has no knowledge nor information.

This defendant denies that he has claimed or does claim to retain the whole of the fund received from said sale to pay himself, his co-assignee, or their counsel, or the clerk, register, and marshal; but this defendant does claim that said fund is subject to claims to be paid by priority or preference, according to the provisions of sec. 28 of the bankrupt act of 1867, among which should be reckoned the costs and expenses of selling said property, and defendant also states that Ducoté, sheriff of the parish of Avoyelles, has presented to said co-assignees and to said district court, in bankruptcy sitting, a bill of $470.00 for keeping said property.

And defendant further says that, actuated by a spirit of fair
69 dealing and abhorrence of litigation, he has offered to said complainant, provided proper permission of court could be obtained
therefor, to settle and pay complainant's claim by paying to him the one-half the proceeds of said property, after deducting therefrom the cost and expense of selling the same.

And defendant especially denies any and all right, *in* the part of complainant, to retain possession of or administer said property, or hold this defendant, either alone or in conjonction with his said co-assignee, responsible for any other or further proceeds thereof than the amounts set forth in annexed S'hedule "A," inasmuch as defendant has, since the commencement of said bankruptcy proceedings, acted legally, wisely, and promptly for the benefit of the creditors of said N. G. Smith, bankrupt.

And now defendant, for answer to the interrogatory propounded by said complainant in his supplemental bill, says that it is true that, since the filing of the original bill herein, defendants have demanded of the sheriff of the parish of Avoyelles possession of the whole of the property
described in complainants' original bill, but that defendants have
70 recovered and taken possession of only a part of said property,
viz., that part set forth and particularly described in S'hedule "A," annexed, and have sold the greater part of said property as described in said s'hedule; that the gross sum realized for such property which has been sold is $1,278.45. Defendant sets forth and annexes a ist of said property sold, but is unable to answer to what persons or person each mule and other articles of said property were sold, and the specific amounts received for each mule and other article of property, more fully than in said annexed s'hedule.

And defendant claims that said fund realized by sale of said property mentioned herein, viz., $1,278.45, should be considered the measure of the value of said property, according to law.

And this defendant denies all and all manner of unlawful combinations and actions wherewith he is by said supplemental bill charged, without this, that there is any other matter, cause, or thing in the said
complainant's supplemental bill contained material or necessary
71 for this defendant to make answer unto, and not herein and hereby
well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge and belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this hon. court shall direct, and humbly prays to be hence dismissed with his reasonable cost and charges in this behalf most wrongfully sustained.

(Signed) H. D. STONE,
(") A. B. LONG,
Solicitors for E. E. Norton, Co-assignee of N. G. Smith.

E. E. Norton, the defendant above named, does hereby make solemn oath that the facts and allegations set forth in the foregoing answer to supplemental bill, so far as the same are stated as of his own knowledge, are true, and that those matters which are stated therein as of information and belief are true and correct to the best of his knowledge, information, and belief.

(Signed) E. E. NORTON, *Assignee.*

Sworn to and subscribed before me this 1st day of March, 1869.
72 (Signed) D. URBAN,
U. S. Comm.

(Copy.)

S'HEDULE A.—*Filed March 1st*, 1869.

Mess. E. E. NORTON & H. B. KNOX,
Assignees in Bankruptcy.
U. S. Bankrupt Court, New Orleans, La.

GENTLEMEN: I have the honor to enclose herewith my report of doings as your agent at Marksville, La., in the matter of N. G. Smith, b'k't. I return an a/c sales of property sold, also accompanied with an account of property missing and that now on hand, which I hold subject to your order.

Very respectfully,
(Signed) W'M McDANIEL.
NEW ORLEANS, LA., *May 25th*, 1868.

A|c sales of property received sold.

1868.		
May 20.	Ten setts mule-harness	$5 80
	One lot britching	3 10
	Six spades	5 10
	Three shovels	2 40
	Twelve hoes	3 35
	Five axes	1 00
	Four harness	1 25
73	One blacksmith bellows	3 75
	Four plows	7 30
	Two woolen coats	7 40
	Eight linen do.	11 90
	One gin-band	10 50
	One old cart	21 00
	One do. wagon	21 00
	One do. sett brass rings	10
	Five linen collars & one lot combs	75
	Four lbs. flax thread	2 25
	One pair boys' boots	1 60
	Five do. do. shoes	4 35
	Nine " men do.	9 65
	Eight blacking-brushes	1 20
	One pair small platform-scales	7 25
	Twenty mules	1,079 45
	Twelve p'rs men boots	18 00
	Total am't rec'd	1,223 45
	Proceeds horse & buggy	55 00
		$1,278 45

Property received & now on hand.

One buggy & harness, sold May, 1868, for $55.00.
Fourteen plows on hand, of little value.
One beadstead,
One table
Three chairs,
One bureau.
Delivered to bankrupt by order of U. S. dist. court in b'k't'y, and with consent creditor & complainant herein.

Property missing as given in s'hedule inventoried.

May, 1868.

74 One mule,
One horse,
died while in sheriff's charge.
Six p'rs men shoes,
Six " boys' "
One lb. flax thread,
One lot currycombs & brushes,
Three woolen coats,
Three p'rs men's boots.
Stolen while in charge of sheriff.
One towel-rack,
Two lamps,
Lost in removing from plantation to Marksville by sh'ff.
Forty bushel' corn,
Ten hundred lbs. fodder,
Expended in feeding stock.
Two blacking-brushes.

Bill of expense incurred by W'm McDaniel as agent for E. E. Norton and H. B. Knox.

Passage for self from New Orleans to Marksville, La.	15 50
Hotel bill at Marksville	9 00
Printing bill	10 00
Auctioneering	10 00
Feed of mules	5 00
Moving property to river	10 00
Bill st'm'r Lafourche, f'g't & passage	57 40
Sundries	5 00
	121 90
Feed bill in New Orleans	4 00
	$125 90

March rules, 1869. Monday, 1st.

THO'S D. MARSHALL
vs.
H. KNOX & E. E. NORTON, ASSIGNEES, &C.
No. 5581.

75 The defendant, E. E. Norton, co-assignee, by his solicitors, A. B. Long and H. D. Stone, has this day filed the amendement to his original answer.

THO'S D. MARSHALL
vs.
H'Y KNOX & E. E. NORTON, ASSIGNEE', &C. } No. 5581.

The defendant, E. E. Norton, co-assignee, by his sollicitors, A. B. Long & H. D. Stone, has this day filed his answer to the supplemental bill.

Seperate answer of H'y Knox to supplemental bill.—Filed March 27th, 1869.

United States circuit court. In chancery.

THO'S D. MARSHALL
vs.
HENRY KNOX & E. E. NORTON, ASSIGNEES. } No. 5581.

To the honorable the judge of the United States circuit court for the fifth judicial circuit and district of Louisiana:

The separate answer of H'y Knox, co-assignee, in bankruptcy of N. G. Smith, to the supplemental bill of complaint of Thomas D. Marshall.

76 This defendant admits the filing of the original bill and its prayer, as by complainant charged.

That he was co-assignee of said Smith, in conjunction with his co-defendant, E. E. Norton.

But this defendant says the duties devolving on the assignees in said case were all performed by his co-defendant, E. E. Norton.

That this defendant took no active part in the administration of said bankrupt estate beyond that of joining with his co-assignee in obtaining an order for the sale of said property.

No part of the proceeds were eve*n* received by this defendant, but the same were received, as this defendant is informed, by his said co-assignee; all which this defendant is informed is truly and correctly set out in the answer of his co-defendant, and filed herein on the 1st of March, 1869, here referred to.

That, beyond as above stated, this defendant has no personal knowledge of the matters and things set forth in complainant's said supplemental bill, nor has this defendant any information touching the
77 matter and things set forth in said bill sufficient to enable him to form any conclusions as to their correctness.

Wherefore he calls for stric*k* proof for the allegations set forth in said bill. And now, having fully answered, this defendant prays to be hence dismissed, with his reasonable costs and charges in this behalf sustained.

(Signed) HENRY KNOX,
Co-assignee of N. G. Smith.
(") E. WOOLDRIDGE.

E. Wooldridge states: He is attorney of Henry Knox; that said Henry Knox is a non-resident of the State of Louisiana, and is now, as he is informed, at the city of New York, in the State of New York; that from information derived from others, he believes the statements contained in the foregoing answer are true.

(Signed) E. WOOLDRIDGE.

This reference approved
F. A. WOOLFLEY, *Clk.*

*Affirmed to & subscribed before me, March 27th, 1869.
(Signed) F. B. VINOT, *D'y Clerk.**

April rules, 1869. Monday, 5th.

THO'S D. MARSHALL
vs.
HENRY KNOX & E. E. NORTON, ASSIGNEE'. } No. 5581.

The complainant has this day filed his replication to the answer and amended answer of defendants, and of defendant E. E. Norton 78 to the original bill of complaint as amended, and to the several answers of defendants, Henry Knox & E. E. Norton, assignees to the supplementary bill of complaint.

Replication.—Filed April 5th, 1869.

United States circuit court.

THO'S D. MARSHALL
vs.
HENRY KNOX & E. E. NORTON, ASSIGNEES OF N. G. Smith. } No. 5581.

Replication of Thomas D. Marshall, complainant, to the answer and amended answer of defendants, and of defendant E. E. Norton to the original bill of complaint as amended, and to the several answers of defendants, Henry Knox and E. E. Norton, assignees to the supplemental bill of complaint.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereunto, saith that he will aver and prove his said bills of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answers of said defendants are 79 uncertain & untrue, and insufficient to be *to be* replied unto by this repliant, without this, that any other matter or thing whatsoever in said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver & prove as this honorable court shall direct. And humbly prays as in and by his said original and supplementals bills he hath already prayed.

(Signed) THO'S D. MARSHALL,
By his solicitors, RACE, FOSTER & E. T. MERRICK.

Agreement to take testimony.—Filed July 1st, 1869.

MARSHALL
vs.
KNOX & NORTON. } No. 5581.

It is agreed that neither party shall be prejudiced by the delay to take out commissions to take testimony in this case.

(Signed) A. B. LONG, *Solicitor for Def't.*
RACE, FOSTER & E. T. MERRICK.

80 It is understood that this agreement shall extend to all testimony to be taken in this case.

(Signed) RACE, FOSTER & E. T. MERRICK,
Solicitors for Comp't.
A. B. LONG.

Commission for complainant. Issued December 31st, 1869.

THOMAS D. MARSHALL
vs.
HENRY KNOX & E. E. NORTON, ASSIGNEES of N. G. Smith, a bankrupt.
} No. 5581.

Circuit court of the United States, for the fifth judicial district, holding sessions in and for the district of Louisiana.

To the parish judge, or any justice of the peace in and for the parish of Avoyelles, Louisiana:

Know *we* that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you and

81 duly examine on the annexed interrogatories, on oath, touching and concerning certain matters and things in a case now depending in the said court, wherein Thomas D. Marshall is complainant and Henry Knox and E. E. Norton, assignees of N. G. Smith, a bankrupt, are defendants; and the same examinations, so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause and send also this writ.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 31st day of December, anno Domini 1869, and the 94th year of the independence of the United States of America.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

Interrogatories.—Filed Aug. 6th, 1869, *and annexed to the foregoing commission.*

United States circuit court, fifth circuit and district of Louisiana. In chancery.

82 BETWEEN THOS. D. MARSHALL, complainant,
and
HENRY KNOX & E. E. NORTON, ASSIGNEES OF N. G. Smith, a bankrupt, defendants.
} No. 5581.

Interrogatories exhibited by said complainant to witnesses residing in the parish of Avoyelles, in said State, including the plaintiff in the cause, to be produced, sworn, and examined in the above-entitled cause on behalf of the complainant.

Int'y 1st. Do you know the parties, complainant and defendants, in the title of these interrogatories named? Declare the truth and your knowledge therein.

Int'y 2d. Please look upon the annexed lease purporting to have been executed the 7th day of February, A. D. 1867, by Thos. D. Marshall, Henry W. Fuller, and N. G. Smith, and say whether or not the signatures thereto of witnesses and parties are genuine or not and where said witnesses reside and whether or not you are acquainted with the Walnut Grove plantation therein mentioned? Where is said
83 plantation situated and to whom did it belong? Who, if any
one, cultivated said plantation during said year A. D. 1867, and what crops were cultivated on said plantation by such person? What moveable property, if any, was placed on said plantation that year, for what purpose, how much, and by whom was it placed thereon? Is said property there now or has it been removed? If removed, who removed it, and what time was it removed? If you answer that any of it was removed from the plantation by process of law, under what office was it done and from what court did the process come, and when were the said movables removed? Set forth the particulars at large with a discriptive-list of said property according to the best of your knowledge, remembrance, and belief, and the truth declare.

Int'y 3d. Where is said movable property now? If the whole or any of it has been sold by any one, who sold it, and where was it sold? Whether or not was the sale preceded by advertisements? If there were advertisements, how were the same published? How long were they published? Whether or no were the advertisements
84 published a sufficient length of time to enable those who would
likely be bidders for that kind of property, to attend the sale and who would have been the persons most likely to purchase that description of property? Whether or no hand-bills posted for one or two days would be a sufficient notice to enable such residents of the parish of Avoyelles, as would likely bid on said property to be present at the sale, and what notice, and how long should notice be given in like case in order to insure a sale for fair prices of such property at that sale? Set forth the particulars at large according to the best of your knowledge, remembrance, and belief, and the truth declare.

Int'y 4th. What was the value of said movable property when first provisionally seized? What was the value of the same in the month of June, A. D. 1868, and what would have been the present value of the same if not interfered with by defendants? Set forth the particulars at large, according to the best of your knowledge, remembrance, and belief, and the truth declare.

85 Int'y 5th. Whether or no did the said Fuller and Smith, or
either of them, make any, and what permanent or other improvements upon said Walnut Grove plantation during the year A. D. 1867, or at any other time. If such improvements were placed on said plantation, state the exact nature of the same, for whose use they were placed thereon. What was the value of the same? State the same fully.

Int'y 6th. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

(Signed) By RACE, FOSTER & E. T. MERRICK,
Sol's for Complainant.

* Cross-examination waived.

(Signed) E. WOOLDRIDGE,
*Att'y for Knox.**

This reference approved.
F. A. WOOLFLEY, *Cl'k.*

CLERK'S OFFICE.

A true copy of the original on file.
New Orleans, December 31st, 1869.
[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

86 *Testimony taken on the foregoing commission in answer to the foregoing interrogatories.*

United States circuit court 5th circuit, and district of Louisiana.

THOMAS D. MARSHALL
vs.
HENRY KNOX & E. E. NORTON, ASSIGNEES of N. G. Smith, a bankrupt. } No. 5581.

Pursuant to the annexed commission, addressed to me, by F. B. Vinot, d'y clerk, for D. Urban, clerk of the United States circuit court for the fifth judicial circuit, holding sessions in and for the State of Louisiana, of date the 31st of December, 1869, I have caused to appear before me, Thomas D. Marshall, Jerome J. Ducoté, and Olivier P. Edwards who, after being duly sworn, I caused their answers to the interrogatories propounded to be written down in the above-entitled cause & signed by them.

Testimony of Tho's D. Marshall.

Answer to 1st interrogatory. I am the complainant, and have seen Knox & Norton, assignees.

87 Answer to int'y 2d. I have examined the annexed lease, & recognized the signatures of the parties and witnesses thereto to be genuine. The witness John Morris, I understand, lives somewhere on the Mississippi, Louisiana. The other witness, S. J. Fuller, I understand, lives in the State of Massachusetts. I know the Walnut Grove plantation, having owned and occupied the same for many years up to 1863, and after said date I have been renting the same. Said plantation is situated on Bayou Bœuf, parish of Avoyelles, State of Louisiana, and belongs to witness. Said plantation was cultivated in the year 1867 by Henry W. Fuller & Nathan G. Smith. The crop cultivated consisted in corn, cotton, & potatoes. The movable property placed on said plantation, consisted in about 21 mules, farming utensils, &c., and a lot of goods which were placed thereon by Fuller & Smith to cultivate and gather their crop; which property, according to the estimat*ive* inventory taken by the sheriff, when the property was provisionally seized, amount*ing* to the sum of seventeen hundred and forty-four dollars, dated 6th Jan., 1865. The property has been removed.

88 The sheriff removed the property from the plantation a short time after it had been provisionally seized, which was 6th January, 1868, the seizure was made. The orders under which the sheriff acted issued from the 7th district court of the parish of Avoyelles, State of Louisiana.

Answer to int'y 3d. I do not know. Saw, after the sale, a handbill, dated on the 18th May, 1868, advertising the sale of the mules and movable property provisionally seized, to be sold on the 20th May, 1868, which purported to have been signed by W'm McDaniel, ag't for Knox & Norton. I am sure that handbills or advertisements posted for two days was not sufficient to notify the planters who were the purchasers of such property, in order to be present at the sale; that it would take at least ten days' notice to insure a sale for a fair price.

4th int'y. The movable property when first provisionally seized was estimated, in my presence, at seventeen hundred & forty-four dollars. I bel*ei*ve the said property was worth, 1868, in June, at least the amount at the date of provisional seizure.

5th int'y. The only repairs or improvements made by Fuller
89 and Smith on the Walnut Grove plantation, in 1867, w*as* repairing fences, which was for their own benefit; as to the value, it amounts to but very little, and they, by contract w*as* to repair the same; that the improvements d*i*stroyed by said Fuller & Smith w*as* much more valuable than any they put on said plantation.

6th int'y. I know nothing else than above stated.

(Signed) THO'S D. MARSHALL.

Sworn to and subscribed before me this 17th day of March, 1870.

(Signed) J. M. EDWARDS,
Parish Judge.

Evidence of J. J. Ducoté.—Answer to interrogatories.

1st int'y. I know Thomas D. Marshall, Smith, and Fuller, but have no acquaintance with Henry Knox and E. E. Norton.

2nd int'y. I recognize the signature of Thomas D. Marshall to the lease; but as to the others, I never saw them sign. I do not know the witnesses, their signatures, nor where they reside. I have been on the Walnut
90 Grove plantation, and the said plantation is situated on Bayou Bœuf, in the parish of Avoyelles, near Holmesville, and belonged to Tho's D. Marshall. Smith & Fuller cultivated the place in 1867; and cultivated thereon, to the best of my knowledge, cotton and corn. There were mules, farming utensils, and other movable property placed on said plantation for that year, for the purpose of cultivating said plantation. Smith and Fuller claimed them as their property, but I do not know by whom they were placed thereon. On the 6th day of January, 1868, by virtue of a writ of provisional seizure, issued by the hon. 7th district court of the State of Louisiana, holding sessions in and for the parish of Avoyelles, in the suit entitled "Thomas D. Marshall vs. H. W. Fuller & Nathan G. Smith," No., on the docket of said court, 5063, directed to me as sheriff of the parish of Avoyelles. I caused to be provisionally seized, by O. P. Edwards, one of my deputies, the following-described property, which was found on the place, to wit:

Twenty-one mules, one horse, one wagon, one cart, one buggy & harness, ten pairs of plantation harness, about forty bushels of corn,
91 one thousand lbs. of fodder, eighteen plows, four harrows, twelve hoes, three shovels, six spades, five axes, one bedstead, one table, three chairs, one towel-rack, one bureau, two oil-lamps, twelve pairs of boys' shoes, two pairs boys' boots, sixteen pairs of men' brogans, five woolen coats, eight linen coats, six lbs. flax-thread, one lot combs, &c., ten blacking-brushes, one pair small platform-scales, one lot of curry-combs & brushes, one blacksmith' bellows, fifteen pairs of men' boots, and one gin-band. On or about the 8th of Feb'uary, 1868, I caused the mentioned property to be removed from said plantation, with the exception of the following articles, which were stolen or d*i*stroyed on said place whilst in the possession of my custodian: Six pairs men' shoes, six pairs boys' shoes, one lb. of flax-thread, one lot of curry-combs

and brushes, three woolen coats, one pair of boy' boots, three pairs of men' boots, one towel-rack, and two lamps. The estimative value of said lost or stolen property is thirty-five dollars & twenty-five cents.

3d int'y. All the aforesaid property provisionally seized by me as aforesaid, except that mentioned as stolen or lost; also one mule, & one horse, which died, were turned over by me, sheriff of Avoyelles,
92 on or about the 18th day of May, 1868, unto W'm McDaniel, agent for Knox & Norton, he having exhibited to me an order from the United States district court in bankruptcy, to that effect; that on or about said eighteenth May, 1868, the said McDaniel posted hand-bills in several places in the parish, advertising the sale of said property to take effect on the 20th of May, 1868, in the town of Marksville, parish of Avoyelles, on which day he offered and sold at public auction a portion of said property; that one bureau, one buggy, one bedstead, and probably several small articles, were not sold on that day, but were removed by said McDaniel from this place; and two mules that I know were sold at private sale. I do not bel*ei*ve the advertisements to have been, by hand-bills for two days, a sufficient time for planters at distance from the court-house, who were most likely to have purchased said property, to have been present at said sale, and I bel*ei*ve that the manner of the advertisement, and the time given, was not sufficient to have realized the full value of said property.

93 4th int'y. When the inventory taken by my deputy of the movable property it was estimated at seventeen hundred and forty-four dollars; but I am satisfied it was worth over two thousand dollars. If it had been my property I would not have taken that amount for it. In June the property had been sold and removed; and knowing several persons who had purchased mules at the sale would not at any time since have taken the price they paid for them.

5th int'y. I know nothing of any improvements erected or placed on the said plantation during the year 1867.

6th int'y. I know nothing further than already stated.

(Signed) J. J. DUCOTÉ.

Sworn to & subscribed before me this 19th March, 1870.

(Signed) J. M. EDWARD,
Parish Judge.

Evidence of O. P. Edwards.—Answer' to interrogatories.

1st int'y. I know the complainant, Tho's D. Marshall, & Smith, & Fuller.

2nd int'y. I know nothing in relation to the lease or signatures,
94 nor where the witnesses live. I know the Walnut Grove plantation. Said plantation is situated on Bayou Bœuf in the parish of Avoyelles, near Holmesville, & that it belonged to Thomas D. Marshall. Smith & Fuller cultivated said plantation during the year 1867. Corn and cotton *was* cultivated on said plantation during the year 1867 by said Smith & Fuller. When I' went as deputy sheriff to said plantation to provisionally seize property in the suit of Thomas D. Marshall vs. Nathan G. Smith and Henry W. Fuller, 7th district court, parish of Avoyelles, No. 5063, I found, on said plantation, twenty-one mules, one horse, one wagon, one cart, one buggy & harness, ten pairs plantation-harness, about forty bushel' of corn, one thousand lbs. fodder, eighteen plows, four harrows, twelve hoes, three shovels, six spades, five axes, one bedstead, one table, three chairs, one towel-rack, one bureau, two

oil-lamps, twelve pairs boys' shoes, two pairs boys' boots, sixteen pairs men' brogans, five woolen coats, eight linen coats, six lbs. flax thread, one lot combs & brushes, one blacksmith' bellows, fifteen pairs men' boots, and one gin-band. Said property was duly appraised in
95 the aggregate sum of seventeen hundred and forty-four dollars.

I am satisfied, at the tak*en* of the inventory that the property provisionally seized was worth more than two thousand dollars, and had such property been mine, I should not have taken that amount for it. I also found on said plantation other movable property, such as carpets, chairs, and other household furniture which was not seized by me, by order of the plaintiff, Thomas D. Marshall. Who placed said property there I do not know, but found it in possession of N. G. Smith, Fuller being absent at the time, or did not show himself to me. The property was removed by the sheriff of the parish of Avoyelles some time after the provisional seizure, which was made on the 6th of January, 1868. Said property was removed by the authority of the sheriff, by his authority, vested in him by the 7th district court in the case aforesaid, to the town of Marksville.

3d int'y. I do not know where the property is now. That, on or about the 18th day of May, 1868, a man claiming to be by the name of W'm McDaniel, agent for Knox & Norton, posted or cause' to be posted handbills, a'vertising the sale of property then in the hands of the
96 sheriff, which had been provisionally seized, to be sold on the 20th day of May, 1868, on which day said W'm McDaniel offered and sold, at public auction, a portion of said property which he received from the hands of the sheriff; the balance which was not sold was removed by said McDaniel from this place. I bel*ei*ve that at least ten days' notice should have been given to have procured the attendance of the planters who were the most likely to have purchased said property.

4th int'y. When the inventory was taken by me as deputy sheriff, with two duly appointed appraisers, said property was appraised in the aggregate sum of seventeen hundred and forty-four dollars, *but I am satisfied it is worth over two thousand dollars.* I bel*ei*ve, in June, 1868, it was worth more, and at present I cannot tell.

This reference approved.
F. A. WOOLFLEY, *Cl'k.*

5th int'y. If any improvements were made I cannot say.

6th int'y. I know nothing more than stated in the foregoing answers.

(Signed) **O. P. EDWARDS.**

Sworn to and subscribed before me this 18th day of March, A. D. 1870.

(Signed) **J. M. EDWARDS,**
Parish Judge.

97 STATE OF LOUISIANA,
Parish of Avoyelles:

I hereby certify that the answers made by Tho's D. Marshall, Jerome J. Ducoté, and Olliver P. Edwards, and reduced to writing, to the interrogatories propounded to them in the above cause, are correctly taken as given by them under oath before me.

This done and signed in the town of Marksville, parish of Avoyelles, State of Louisiana, this 18th day of the month of March, 1870.

(Signed) **J. M. EDWARDS,**
Parish Judge.

The lease referred to in the foregoing interrogatories, being the original lease of which a true copy will be found at page 13.

Note of evidence.—Filed February 28th, 1871.

United States circuit court in & for the district of Louisiana.

THO'S D. MARSHALL
vs. } No. 5581.
HENRY KNOX & AL.

98 Complainant offered in evidence testimony, "A;" admission, under agreement 27 February, 1871, that 20 days' notice was given assignee prior to filing supplemental bill; the order in bankruptcy, of 27th April, 1868; hand-bill, marked "C;" lease, marked "B;" transcript in suit of Marshall vs. Smith & al., in parish of Avoyelles, marked "D;" transcrip' from district court of U. S. sitting in bankruptcy, marked "E;" notice of supplemental petition marked "F;" testimony of Leonard; depositions of Tho's D. Marshall, Ducoté, Edwards, & E. T. Merrick, being testimony marked "A."

Defendants offered depositions of W'm McDaniel, W. E. Trevedd, & E. E. Norton, No. 1 & 2; also exhibit annexed to answer of Norton, marked "A;" order of the dist. court, dated April 9th, 1868, and order of the U. S. dist. court in bankruptcy of 27th April, 1868.

Documents offered in evidence by complainant.—Filed Feb'y 28th, 1871.

TESTIMONY MARKED "A."

United States circuit court.

99 THO'S D. MARSHALL
vs. } No. 5581.
HENRY KNOX & AL., ASSIGNEES.

Testimony on behalf of complainant, taken before D. Urban, U. S. commissioner—present, E. T. Merrick, esq., of counsel for complainant; absent, E. Wooldridge, of counsel for Henry Knox, and absent, E. E. Norton.

The complainant offers in evidence the lease filed May 4th, 1868, in above cause.

Also the transcrip' of the record in case of Tho's D. Marshall vs. Smith & Fuller, No. 5063 of the 7th district court, parish of Avoyelles, and filed in this cause, May 4th, 1868; also the depositions of Thomas D. Marshall, J. J. Ducoté, and O. P. Edwards, on file in this cause, April 4th, 1870.

GEORGE W. LEONARD, being duly sworn, says:

100 During the year 1868, I was engaged in this city in the livery-and-sale-stables business; have sold during the season of 1868 and 1869, three thousand mules. In January, 1868, good cotton-mules were worth about one hundred and sixty-five dollars per head. I should consider the average value for mules for cotton plantations, worth that. In May, 1868, good cotton-mules w*as* about the same price per head. In January, 1869, the average value for good cotton-mules was one hundred and ninety dollars per head. The usual rates of shipping mules to Barbin's Landing, in Avoyelles Parish, the usual landing-place of said parish, is from five to seven dollars per head, and

I consider that that would be a fair price to bring them to New Orleans from said landing.

(Signed) GEORGE W. LEONARD.

Sworn to and subscribed before me this 21st May, 1870.

(Signed) D. URBAN,
U. S. Comm.

Complainant, also, offers the transcript from the U. S. district court in bankruptcy, filed in the above suit on April 28th, 1870; also, the printed notice of sale, (which is marked OO, by the commissioner.)

101 E. T. MERRICK, being duly sworn, says:

I am one of the solicitors for the complainant in this case. Before the filing of the original bill of complaint in this case, on behalf of Thomas D. Marshall, the complainant, I offered to give bond to the assignees, with security, to protect any creditors who might have claims or privileges upon the property provisionally seized in the parish of Avoyelles, in the case of Thomas D. Marshall vs. Smith & Fuller, superior to the lessor's privilege claimed by said Marshall, and I asked E. E. Norton, one of the assignees, to allow my client to proceed and sell the property in said suit in said State court. Mr. Norton, who seemed to have the principal control of the matter, declined to allow it to be done. On the 19th of December, 1868, I sent around, by one of our young men in the office, a notice to Henry Knox and E. E. Norton, of which the one now produced is a copy. (Said copy of said notice is marked PP by the commissioner, and complainant now offers the same.) It was reported to me the same day, in perhaps an hour afterwards or less, as served, as I perceived by the endorsements thereon,
102 which endorsements were made on the return of the young man to the office and in my presence. He is not at our employ at present.

(Signed) E. T. MERRICK.

Sworn to and subscribed before me, this 21st May, 1870.

(Signed) D. URBAN,
U. S. Comm'r.

Complainant reserves the right to read portions of the answer on the hearing.

(Signed) D. URBAN,
U. S. Comm'r.

Handbill marked "C."—Filed May 21st, 1871.

AUCTION SALE,

To take place on Wednesday next, 20th inst., 1868, at the court-house door, in the town of Marksville, the following-described property, to-wit:

1. Twenty mules.
2. One wagon.
3. One buggy & harness.
4. One cart.
5. Ten prs. plantation harness.
6. Eighteen ploughs.

7. Four harrows.
8. Twelve hoes.
9. Three shovels.
103 10. Six spades.
11. Five axes.
12. Two oil-lamps.
13. Twelve prs. boys' shoes.
14. Two " boots.
15. Sixteen " men' brogans.
16. Five woolen coats.
17. Eight brown-linen coats.
18. Five lbs. flax thread.
19. One lot of combs.
20. Ten blacking-brushes.
21. One pr. small platform-scales.
22. One lot currycombs and brushes.
23. One blacksmith bellows.
24. Fifteen prs. men's boots.
25. One gin-band.

Terms.—Cash on the spot.
Sale to commence at 10 a. m.
Marksville, May 18th, 1868.
(Signed) W'M McDANIEL,
Ag't for Knox & Norton.

Transcript in suit of Marshall vs. Smith & al., in parish of Avoyelles, is copied at page .

Transcript from United States district court, sitting in bankruptcy, marked "E."—Filed April 28th, 1871.

District court of the United States, district of Louisiana. In bankruptcy.

104 IN THE MATTER OF
NATHAN G. SMITH, BANKRUPT. } No. 136.

Rule.—Filed February 14th, 1868.

U. S. district court. In bankruptcy.

IN THE MATTER OF
NATHAN G. SMITH, BANKRUPT. } No. 136.

On motion of A. B. Long, attorney for H'y Knox & E. E. Norton, assignees herein, & on showing to the court that Ducoté, sheriff of the parish of Avoyelles, holds in his official possession at the suit of Tho's D. Marshall, certain property belonging to the estate of said bankrupt, to wit:

(1) One horse, twenty-one (21) mules, one (1) wagon, one (1) cart, eighteen (18) plows, four (4) harrows, twelve (12) hoes, three (3) shovels, six (6) spades, five (5) axes, curry-combs, blacksmith tools, one carriage, two (2) lamps, twelve (12) prs. boys' shoes, one (1) buggy harness, ten (10) sets planter's harness, forty (40) bushels corn, one hundred
105 (100) lbs. fodder, two (2) pairs boys' boots, sixteen (16) prs. brogans, fifteen (15) prs. boots, five (5) woolen coats, eight (8) linen

coats, five (5) lbs. thread, one (1) gin-band, one (1) pr. scales, one (1) lot sundries, of the estimated value of $2,613, or the proceeds arising from the sale thereof.

And on showing to the court that various persons, creditors of the said bankrupt, claim to have a privilege on said property and the money arising from the sale thereof, and on further showing to the court that it is necessary for a proper adjustment of all claims, privileges, & liens alleged against said property, that the possession thereof should be surrendered to said assignees, to be subject to the control and order of this court—

It is ordered that the said Ducoté, sheriff of the parish of Avoyelles, show cause, on the 25th day of Feb'uary, A. D. 1868, at 11 a. m., why he should not deliver the said property, or the proceeds thereof, to said assignees, & abide by such other order of this court as may be deemed
lawful and proper herein; that Thomas D. Marshall of said
106 parish of Avoyelles, said seizing creditor, show cause to the same
effect at the same time.

Meanwhile it is further ordered that said Ducoté, sheriff of said parish of Avoyelles, and said Tho's D. Marshall be restrained & enjoined from any disposition of said property, or money arising from the sale thereof, and they be required to retain the same to abide the further order of the court in these proceedings.

And the said Ducoté, sheriff as aforesaid, is hereby required to furnish, on the hearing of this rule, a full and complete list of the property seized by him at the suit of the said Tho's D. Marshall, & if any part thereof has been sold, that he state specially the articles sold, and the price obtained therefor, and the purchasers of each and every article sold, and that he produce in court on the hearing of this rule, all moneys by him received from the said sale.

Document "A."

Inventory of the property provisionally seized in the case of Thomas
107 *D. Marshall vs. Smith & Fuller, No. 5063, D. C. A.*

Twenty-one mules,	valued at..................	$1,260 00
One horse,	"	50 00
One wagon,	"	30 00
One cart,	"	15 00
One buggy & harness,	"	100 00
Ten p'rs plantation harness,	"	20 00
About forty bushels of corn,	"	40 00
" one thousand lbs. fodder,	"	10 00
Eighteen plows,	"	50 00
Four harrows,	"	4 00
Twelve hoes,	"	3 00
Three shovels	"	1 50
Six spades,	"	3 00
Five axes,	"	2 50
One bedstead,	"	15 00
One bureau,	"	2 50
Three chairs,	"	3 00
One table-rack	"	1 00
One table,	"	15 00
Two oil-lamps,	"	3 00
Twelve p'rs boys' shoes,	"	9 00
Two " " boots,	"	2 50

Sixteen " men's brogans,	"	16 00
Five woolen coats,	"	15 00
Eight brown-linen coats,	"	8 00
Six lbs. flax-thread,	"	5 00
One lot combs, &c.,	"	2 00
Ten blacking-brushes,	"	1 00
One p'r small platform-scales,	"	2 50
One lot curry-combs & brushes,	"	2 00
One blacksmith' bellows,	"	5 00
Fifteen p'rs men's boots,	"	37 50
One gin-band,	"	10 00
		$1,744 00

108 I certify the within to be a correct copy of the inventory of the property provisionally seized, in the suit entitled Tho's D. Marshall vs. Smith & Fuller, No. 5063, district court, Avoyelles.

(Signed) J. J. DUCOTÉ *Sheriff.*

DOCUMENT "C."

STATE OF LOUISIANA,
Parish of Avoyelles:

I hereby certify that the corn & fodder provisionally seized, in the suit entitled Thomas D. Marshall vs. Smith & Fuller, No. 5063, district court Avoyelles, was consumed in feeding the mules and the horse seized in said case.

Marksville, Feb'y 20th, 1868.

(Signed) J. J. DUCOTÉ, *Sheriff.*

DOCUMENT "B."

District court, Avoyelles.

THO'S D. MARSHALL
vs. No. 5063.
SMITH & FULLER.

To J. J. Ducoté, sheriff, Dr.

109 1868.

Jan'y 6th.	To service of cit. & petition on Smith, & mileage	3 70
	" Fuller, " "	3 70
	" two writs	1 00
	" seizure	1 50
	" two notices & services	2 00
	" inventory	2 00
	" return	2 00
Feb'y 8th.	Am't paid for removing property seize and ferriages	31 50
	Guardianship from Jan. 6th, @ 2.00 pc day	100 00
	90 bushels corn, @ 1.25	112 50
		$260 30

The above am't includes the sh'ff's costs up to Feb'y 2th, 1868.

Answer of J. J. Ducoté to rule.—Filed Feb'y 25th, 1868, *at* 11 *a. m.*

United States district court. In bankruptcy.

In the matter of N. G. Smith, bankrupt. } No. 136.

In answer to the rule herein taken against J. J. Ducoté, sheriff, & T. D. Marshall, the said Ducoté comes, and by his attorneys, Race, Foster & E. T. Merrick, says that the annexed inventory, marked "A,"
110 shows what property he has seized in the suit of Tho's D. Marshall vs. Smith & Fuller, No. 5063, of the 7th district court of La., in and for the parish of Avoyelles, with the estimation thereof; that, up to the present time, respondent has incurred costs and expenses to the amount of $260, as appears by Exhibit B, herewith filed; and that Exhibit C shows that the small amount of corn and fodder has been consumed by said stock; and, further answering, respondent says that none of said property has been sold. (Said documents are made a part hereof.)

And, further answering, respondent says that said Fuller has not made any surrender in bankruptcy; and that said district court has not been ousted of jurisdiction over said partnership effects; and, for further answer, this respondent adopts the answer of said Tho's D. Marshall.

Wherefore he prays that said assignees take nothing by their rule, and that the same be discharged.

(Signed) By RACE, FOSTER & E. T. MERRICK,
Att'ys for said Sheriff.

Nota.—The documents A, B, C, and referred to in the foregoing, are transcribed from pages 106 to 108.

111 *Answer to rule.—Filed February 25th*, 1868.

United States district court. In bankruptcy.

In the matter of N. G. Smith, bankrupt. } No. 136.

In this case Tho's D. Marshall, by Race, Foster & E. T. Merrick, his attorneys, by way of exception & answer to the rule herein taken against him and the sheriff of the parish of Avoyelles, by Henry Knox & E. E. Norton, assignees, says that he cannot be deprived by this hon. court of the benefit of his seizure under the authority of the State court, holding sessions in and for said parish of Avoyelles, for the following reasons, viz:

That, on or about the seventh day of Feb'uary, A. D. 1867, this respondent leased to said Henry W. Fuller & N. G. Smith, partners in planting a plantation situated in said parish of Avoyelles, known as the Walnut Grove plantation, containing 500 acres of cleaned land or thereabout, for three years, commencing the 1st day of January, A. D. 1867, and ending the 31st day of December, 1869, at six dollars per
112 acre yearly rent, payable annually—the first payment to be made on the first of January, and the second payment to be made on the 31st of December of each rental year, the first payment being then immediately paid.

Respondent further represents that there is now due him in cash on said lease from said lessees to this respondent the sum of $2,900, and $4,500 yet to fall due, as will appear by said lease.

Respondent, further answering, says that by the law of Louisiana he has the lessor's privilege and right of pledge upon all the movables found on said plantation, including those serving for the labors of the farm, furniture in the house, and the fruits produced during the lease of the land.

And having such right of possession & pledge of said movables against said Smith & Fuller, respondent, as he might lawfully do. caused a writ of provisional seizure to issue, & thereunder caused the sheriff of said parish to take into the custody of the law, on or about the 6th day of January of the present year, the property upon said plantation subject to respondent lessor's privilege and pledge as aforesaid, and to subject the same both against said Fuller & Smith, 113 partners, to the payment of the said rent then due, amounting at that time to the sum of $3,000, which will more fully appear by a certified copy of said record annexed hereto.

This respondent, further answering, says that the said property, seized as aforesaid, belonged to said firm of Fuller & Smith, and the surrender of the said Smith in bankruptcy cannot have the affect of transferring said partnership effects pledge to respondent, and affected by respondent lessor's privilege to said assignees, and that respondent's right over said property seized is superior to and exclusive of all other supposed claims thereon, the existence of which respondent denies; and that it cannot serve any good purposes to take said property out of the custody of said sheriff, and out of the jurisdiction of said 7th judicial district court in and for the parish of Avoyelles aforesaid; and that it will make much less expense to allow said suit to take its course against said Fuller and the property under seizure.

Wherefore this respondent prays that said rule be discharged and for his costs, and that he be permitted to proceed with his process 114 in said cause.

(Signed) By RACE, FOSTER & E. T. MERRICK,
For Respondent in Rule.

Hearing rule and submission.—Extract from the minutes of February 25th, 1868.

IN THE MATTER OF NATHAN G. SMITH, BANKRUPT. } No. 136.

The rule taken on the 14th inst. by the assignees came up—

A. B. Long for pl'ffs in rule; Race, Foster & E. T. Merrick, for def'ts in rule—

When, after hearing the evidence and argument, the court took time to advise.

Order: Rule absolute.—Extract from the minutes of April 9th, 1868.

IN THE MATTER OF NATHAN G. SMITH, BANKRUPT. } No. 136.

For reasons orally assigned by the court, it is ordered and decreed that the rule taken by the assignees on the 14th Feb'uary, 1868, 115 be made absolute, and that the sheriff of the parish of Avoyelles, and Thomas D. Marshall, the seizing creditor, do deliver to said assignees the bankrupt's property seized by them, or, if sold, the proceeds of the same.

Notice of appeal.—Filed April 15th, 1870, at 11 a. m.

District court of the U. S. for the district of Louisiana. In bankruptcy.

IN THE MATTER OF NATHAN G. SMITH, BANKRUPT. } No. 136.

SIRS: You are hereby notified that an appeal is claimed in the above-entitled case by Thomas D. Marshall & Ducoté, sheriff, from a decree rendered upon the rule taken by H'y Knox & E. E. Norton, assignees in their favor.

(Signed) RACE, FOSTER & E. T. MERRICK,
Sol's for said Defendants.

To CHA'S C. CLAIBORNE, *Clerk of District Court, and*
HY. KNOX & E. E. NORTON, *Assignees.*

116 Service accepted, saving rights to except to right to appeal.
(Signed) A. B. LONG,
Att'y for Bank't & H Knox, Ass'ee.
(") H. D. STONE,
Att'y of E. E. Norton, Ass'ee.

Rule to dismiss appeal.—Filed April 16th, 1868, at 11 a. m.

U. S. dist. c't. In bankruptcy.

IN THE MATTER OF NATHAN G. SMITH, BANKRUPT. } No. 136.

On motion of A. B. Long and H. D. Stone, attorneys for Henry Knox & E. E. Norton, assignees herein, and, on suggesting that Ducoté, sheriff of the parish of Avoyelles, & Tho's D. Marshall, have filed formal applications for appeal herein from the order rendered by this court on the 8th inst., in relation to the custody of certain property heretofore seized by said sheriff—

It is ordered that said J. J. Ducoté and said Marshall show cause, on the 22d, at 11 a. m., why said application for appeal should not be discharged and the proceedings therein dismissed, for the reason that neither of said formal applicants is all'ed or proved creditor of 117 said bankrupt; that neither of said appel'ants has been aggrieved by order rendered herein; that this appeal is not authorized under section 8 of the present bankrupt law of the U. S.; that the decision rendered is not such a final decree as in law or equity entitles said Ducoté or Marshall to appeal or writ of error from this court; and that Ducoté, being simply an executive officer, has no legal interests which courts can protect by allowance of appeal.

Service accepted April 15th, 1868.

(Signed) RACE, FOSTER & E. T. MERRICK,
Sol's for Marshall & Ducoté.

Petition for appeal—Filed April 20th, 1868, *at* 10 *a. m.*

IN THE MATTER OF NATHAN G. SMITH, A BANKRUPT. } No. 136

To the honorable the judge of the district court of the United States for the district of Louisiana:

The petition of Thomas Douglas Marshall, & J. J. Ducoté, sheriff of the parish of Avoyelles, in said State, respectfully represents that, 118 in matter of Nathan G. Smith, a bankrupt, being cause No. 136 of the district court of the U. S. for said district, a final decree has been rendered upon a rule taken in said cause by H'y Knox & E. E. Norton, assignees, against these petitioners, depriving your petitioner Tho's D. Marshall of his right of possession, detention, & pledge as lessor upon certain valuable movable property therein set forth, which had previously been subjected to said right by the partnership firm of Smith & Fuller, and which was and is held by said J. J. Ducoté, sheriff, by virtue of a writ of provisional seizure, issued in a process against said firm in the 7th judicial district court in and for the said parish of Avoyelles, and State of Louisiana, at the suit of said petitioner Marshall.

Petitioners further represent that they feel aggrieved by said decree, which they deem erroneous, and insist that the same is erroneous among other things, in this:

That said decree deprives these appellants of the possession of said property, subject by law to the vested right of pledge & detention in said Marshall to said property without paying the sum of 119 $2,900, and interest now due, & the $4,500 to fall due upon the lease, the only condition upon which said property can be taken from said Marshall.

And in this also, that it deprives the said Marshall of the benefit of his said action against said partnership firm, and withdraws said property in which said Smith, as a partner, had only one residuary interest from the jurisdiction of said court, both as to said firm and said Fuller, and adjudges said property to belong to said bankrupt only. And these appellants, for these and other reasons, appeal from the whole of said decree in favor of said Henry Knox & E. E. Norton, assignees, & pray that the said decree, and every part thereof, may be re*serv*ed, with costs, or such other decree thereupon made as to the circuit court shall seem just, and that the appellees may be condemned to pay the appellants their costs & damages in the premises.

(Signed) By RACE, FOSTER & E. T. MERRICK,
Appellants' Solicitors.

Appeal bond.

UNITED STATES OF AMERICA,
120 *District of Louisiana:*

District court of the United States. In bankruptcy.

IN THE MATTER OF NATHAN G. SMITH, BANKRUPT. } No. 136. Appeal bond.

Know all men by these presents that we, Thomas Douglas Marshall & J. J. Ducoté, as principals, and J. N. Payne & E. T. Merrick, as sureties, are held and firmly bound unto Henry Knox & E. E. Norton, assignees, in the sum of , to be paid to the said Knox & Norton, assignees, for the payment of which well and truly to be made in lawful money of the United States, we bind ourselves, and each of us, our and each of our heirs, executors, administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated at New Orleans the day of 187 .

Whereas the above-named Marshall & Ducoté have appealed to the next term of the circuit court of the United, States, for the 5th circuit, and district of Louisiana, from a final judgment of the district court of the United States for said district, rendered against said Marshall & Ducoté on the in the above-entitled cause: 121

Now, therefore, the condition of this obligation is such, that if the above-named appellant shall prosecute his appeal to effect, and answer all damages and costs, and satisfy whatever judgment may be rendered against him if he fails to make his appeal good, then this obligation to be void; otherwise the same shall be and remain in full force and effect.

(Signed) THO'S G. MARSHALL &
J. J. DUCOTÉ, [L. S.]
(") By RACE, FOSTER & E. T. MERRICK, *Att'ys.* [L. S.]
(") J. N. PAYNE. [L. S.]
(") E. T. MERRICK. [L. S.]

Signed, sealed, & delivered in presence of—

Order. Rule continued.—From the minutes of 22 *April*, 1868.

IN THE MATTER OF NATHAN G. SMITH, BANKRUPT. } No. 136.

122 By consent of counsel the rule herein fixed for this day is continued till the 24th inst., at 11 a. m.

Order refusing appeal.—From the minutes of 24th April, 1868.

IN THE MATTER OF NATHAN G. SMITH, BANKRUPT. } No. 136.

The rule taken by assignees on the 16th inst., came up for trial—A. B. Long, for pl'ffs in rule; Race, Foster & E. T. Merrick, for def'ts in rule—when, after hearing argument, for reasons orally assigned, it is ordered that the rule be made absolute, and the appeal asked for refused with costs.

District court of the U. S., district of Louisiana.

I certify the foregoing to be a full and complete transcript of all the proceedings had, documents filed, and evidence adduced on the trial of the rule by the assignees upon the sheriff of the parish of Avoyelles & Thomas D. Marshall, in the bankruptcy of N. G. Smith, No. 136 in bankruptcy, of the docket, and of the action of the court upon the application for an appeal by said sheriff & Tho's D. Marshall. 123

In testimony whereof I have hereto set my hand & seal of our said court, at N. Orleans, this 22d of April, A. D. 1870.

[SEAL.] (Signed) CH'S CLAIBORNE, *Clerk.*

Notice of supplemental petition, marked " F."—Filed May 21st, 1870.

Circuit court of the United States.

THO'S D. MARSHALL *vs.* HENRY KNOX & AL., ASSIGNEES. } No. 5581. In chancery.

To Henry Knox & E. E. Norton, assignees of N. G. Smith, bankrupt.

GENTLEMEN: You are hereby notified that I shall moved the court in 20 days from this date for leave to file a supplemental bill in the above-entitled case so as to charge you with, and compel you to account for, the full value of all the property mentioned in the original bill 124 belonging to Smith & Fuller, subject to any lessor's privilege and pledge, as described and set forth in said original bill, viz, for the sum of twenty-six hundred and thirteen dollars, on the ground and for the cause that you, as assignees, were not entitled to take said property out of the hands of the sheriff of the parish of Avoyelles, he having legal custody thereof, under the authority of a State court, at my instance, as mentioned in said original bill, without paying the rent covenanted to be paid under the lease, and costs, and that you were without any authority in law to sell and dispose of the entire interest of said Fuller & Smith in and to said property, subject to my said lessor's privilege & pledge, and because you were without authority to sell the separate interests of said Fuller & Smith, and because the pretended sale set up in your answer was made without observing the forms of the law, and the usual ten days' notice, (and publication in the newspapers,) and said property has been sacrificed; and, if any of said property has been lost, destroyed, or deteriorated, it has been in conse- 125 quence of your illegal interference with my rights as lessor and pledgee, whereby you have prevented me from receiving my just rights, my earnest remonstrances.

December 19th, A. D. 1868.

Respectfully, yours, &c.,

(Signed) THOMAS D. MARSHALL,

(") By RACE, FOSTER & E. T. MERRICK,

His Att'ys & Solicitors.

Served a copy of the above to Mr. Knox, per G. M. Emack, at 5 mi. past 10 o'clock. Served a copy of the above to E. E. Norton at 15 mi. past 10 o'clock.

P. P.—Offered by complainant May 21st, 1870.

D. URBAN,
U. S. Comm'r.

Documents offered in evidence by defendants and filed Feb'uary 28th, 1871.

TESTIMONY OF W'M MCDANIELS.

United States circuit court, district of Louisiana.

T. D. MARSHALL *vs.* E. E. NORTON & AL. } No. 5581.

Testimony of William McDaniels, taken by consent, and to be used on the hearing of

126 I was employed by the assignees of Nathan G. Smith, bankrupt, to sell certain personal property surrendered by the bankrupt. This property was in the parish of Avoyelles, and was in the possession of Ducoté, sheriff of that parish, and consisted of mules, cart, plows, boots and shoes, and farming utensils. I was employed to sell the property. The authority from the assignees was in writing. I don't know whether I returned it to Mr. Norton or lost it with my other papers; I think I lost it. I had my papers in the breast pocket of my coat—including papers relating to this transaction—and they, together with my coat, were stolen from my office. I have not those instructions in my possession now. I won't speak positively, but I don't think I have. I had verbal instructions also. They were about of the same tenor with the written instructions. I was directed to take possession of the property and sell them to the best advantage. I went to the sheriff of Avoyelles Parish, and showed him my letters from the assignees. He consulted with his lawyers, and then gave me possession of the property. Mr. Ducoté, sheriff, went out and had the property gathered up for me. They were scattered about the country on different plantations.
127 The condition of the stock was very poor—the stock was poor stock—and was in very poor condition. I consulted with Mr. Ducoté in relation to the best manner of disposing of the property; perhaps with the landlord of the tavern where I stopped—but of this I am not sure—and we agreed that the best way was to have handbills struck of', and distributed about the country. Ducoté*s* and his deputies distributed a great many of these handbills, and I gave a great many myself to strangers coming in town. There *was* no daily papers published there. I don't really remember whether I had any expenses or not upon the keeping the stock, except what I paid in getting it to the river and down. I gave a notice from Monday to Wednesday noon of the sale; this was to save time and expense. There were between two and three hundred people present at the sale. Mr. Ducoté made the sale, that is he acted as auctioneer. The price realized for the stock was very good. The farming utensils did not sell so well. I should have been perfectly satisfied with the prices realized had the things been my own. Mr. Ducoté said that he thought that the stock brought
128 large prices; that he was entirely satisfied with them, and that it was as much again as he had suspected. (Objected to.) I did not sell all the property that came into my possesion. I brought a part to this city. I did so in order to get better prices. I brought such things as would not sell there. A part I sold here, and the balance I turned over to Mr. Norton. I can't state exactly what I turned over. I did not receive*d* from Ducoté, sheriff, all the property that he had seized
This reference approved *& taken into his possession. Some of it was claimed by a lady. I did not receive from Ducoté, sheriff, all that he had seized* in the suit of Marshall vs. Fuller & Smith. The reason was that some of it was missing. It had been lost by the sheriff. I made a report in writing of all that I did to Mr. Norton, enumerating the property I received, the prices it brought, the expenses and all. That is a perfectly truthful and correct statement. I cannot now remember all the things that were missing which the sheriff had seized, but it is correctly stated in that report. I do not think that any larger prices would have been realized had a longer or different notice been given. I consulted with Mr. Ducoté as to the notice I should give.

I think it was in May, 1868, that I went up to Marksville to
129 attend to the sale of the property. I think that I arrived on Monday morning. I arrived early in the morning, at about 8

o'clock. First, I went to see the sheriff. I saw him a few minutes after arriving to town. The property was not brought all into town until the day of the sale. The sheriff delivered the property into my possession, as agent of the assignees, before the sale; that is all that I ever received from him. The mules were brought in town the day of the sale. I think Ducoté had the wagon, using it. I can't recollect exactly what property it was which the sheriff had seized in the suit vs. Smith & Fuller which he did not turn over to me—some mules, a horse, some tools, and other things. I don't now recollect how many mules I sold. I think I gave up some furniture to the lady. The furniture I left in Norton's charge. I brought some of the mules to the city—I think four or five—some plows, a buggy, and harness. I sold those mules in the city. I sold them at auction; don't recollect who bought them. I can't recollect what I got for them; were not advertised. The sale was advertised. It was a regular sale. I am a stock-dealer. At that time I lived in the
130 city. I can't recollect the ages of the mules; some were quite old; some not very old. I held no official position; I was merely authorized by the assignees. I went immediately to the printing-office after seeing Ducoté, and got the handbills out as soon as I could. Don't know the usual lenght' of time for sales of personally in the country. I don't know that I could answer now the question as to what was the market-value of mules in May, 1868. The value of mules now ranges from $50 to $250. I can't say how much more these mules would have brought if sold at 12 months' credit. I think the sale took place at about 12 o'clock; we waited for the people come in. There was no publication of the sale that I remember, except that of the handbill. If I arrived at Marksville on the 18th May, the handbill would bear date the same day, and the sale was to take place on the 20th; I don't recollect about the date. I had no acquaintance in that part of the country. The large plantations are generally on the bayous. Marksville is situated on the edge of a prairie. I don't remember what the sheriff' charges were on the property when he delivered it up to me;
131 something in the neighborhood of $500, I think. Sometimes poor stock is very valuable. If the stock is young it makes great difference to the planters in the country I have been in the stock business all my life nearly, & I know it makes a great difference. I do not know that the property I sold was the property of N. G. Smith, nor that he surrendered it in bankruptcy.

Re-direct:

My business, at the time of the sale, was buying and selling horses &mules. I had followed that business for twenty years. I was thoroughly familiar with the value of said property. I turned over no property to a lady. Some was claimed by one, but I delivered none to her; all *what* I did not sell I turned over to Mr. Norton. The papers, which I showed to the sheriff, upon which he delivered the property to me, was a title from Mr. Norton, directing the sheriff to deliver me the property seized in the suit of Marshall vs. Fuller & Smith. I had an order of court, also, which I showed to Mr. Ducoté. This order I received from Mr. Norton. The mules that I brought down were not quite an average, but were nearly an average.

132 **Re-cross:**

The reason that I brought them down was that every one was supplied that would buy at all. These were not the poorest in the lot. We commenced with the mules that were handy. We had them all in the court-house yard. I think the annex' marked W. McD. is near a copy

of the handbill. I am not positive, but I think so. The handbills were gotten out before the things were delivered up to me. Some things were never sold; they were never delivered to me. There were boots, and a good many things which were never delivered to me; I can't state precisely what. The sheriff told me that a portion of the property was stolen. (Objected to.) The farming utensils, with the exception of one plow, which I brought to the city, was a fair averrage of all the rest. There was but one plow that was worth anything. The farming utensils were in very bad condition; they were old and coarse. I could not a valuation on them. They were of small value. I furnished to Col. Norton a list of the things that I sold. The plows were of different kinds. I can't tell of whose make they were. They were so injured and broken that it would be hard to find out. I sold a few
133 of them there—very few; there was no demand for them. I don't
remember how many I brought to the city. Those I brought to the city I turned over to Col. Norton. As nearly as I remember, they were both wrought and cast iron plows. I forget whether there were scrapes among them. A good many of the plows look as if they had been used five or six seasons. They were all worn out. I can't say whether all did. I brought the plows to the city, because I had to account for them. I don't know what they sold for here. I think there is no demand for plows of that description here.

Re-direct:

I offered those plows for sale in Marksville, and could not get a bid for them. I offered all for sale that I brought down, except the furniture, but could get no bid for them.

(Signed) W'M McDANIEL.

Testimony of W. F. Trewitt, taken also by consent.

I am a keeper of sale-stables for the sale of mules, horses, and other animals. I have followed that business for about eight years. I am judge of animals of that description. In the year 1868
134 I remember to have sold four mules, part of a lot brought down
from Marksville, Avoyelles Parish by W'm McDaniel. He brought down no other mules or horses. When I say part of a lot, I mean part of the lot which Col. Norton had to sell in this matter. Col. Norton employed me to act for him in selling the stock, and talked it over with me, but as I could not go, being very busy, he employed McDaniel. The four mules brought down by McDaniel were small—13 or 13½ hands high. They were poor, very poor; three of them even very old. The animals were of a poor quality—the poorest that I ever saw. It would be impossible to sell them, except at public sale, where they might be bought by persons, who stand and purchase cheap stock. The four mules brought, I think, less than $100 for the four, but I cannot state the price positively. They were sold at auction. It was a regular auction sale, and notice was given in the papers. These sales are well known. There was a good attendance at the sale. They brought their market-value at that time. I saw also the plows and farming
135 utensils which W'm McDaniel brought down. There was not
a whole plow in the lot. Every one was defective in one or more particulars. They were either very much worn out, or had been exposed to rough weather. There was also some furniture—a very small lot of very trifling value. If it had been put up at auction, it could not have realized more than $25 or $50. The furniture was old and origin-

ally had been of cheap value—there was very little of it. I only sold the mules. I saw the plows and utensils on the way. They were worth just what they would bring as old iron. I wouldn't pay freight on them. I have known McDaniel between 6 and 7 years. He is a stock trader. The plows were light cotton-plows. I don't know whether there is a market for such plows here. I do not think there is. There were, I think, 10 to 14 plows brought down here. There might have been more than 8. I had a list made of the sale, and gave it to Mr. Norton. The furniture was a small lot of old-fashion country furniture. I think there was a bureau and bedstead; think it was not mahogany; think it was com-'on plain furniture. There was buggy & harness. Have kept
136 stables that would accom'odate 300 to 500 head of animals, about 7 years. The buggy was a Vermont sider-spring buggy. The mules brought down were large enough for a cotton plantation; that is, such mules could be used on a cotton-plantation, but very rarely are. I don't know what became of the buggy. I went north in July, and I think that the buggy was not disposed of at that time. It was taken round to my establishment. It was not used at my establishment to my knowledge.

Re-direct:

The buggy was of a class that sold, when new, from fifty to $120. The buggy was worth about fifty dollars. There was part of an old harness with it, and together they were worth about fifty dollars. It was the cheapest kind of country harness. Both buggy & harness had been used a good deal and exposed to the weather a good deal. I sold this winter 16 mules at $50 apiece which were better than those I sold in '68, even if they had been in good order.

(Signed) W. F. TREVETT.

Testimony of E. E. Norton, taken by consent.

137 I am one of the assignees of N. G. Smith, bankrupt. I obtained order of court to sell certain property surrendered by said Smith. I employed W'm McDaniel to take possession of the mules and farming utensils surrendered by Smith, to sell them if he could obtain fair prices; otherwise to bring them to this city and sell them here. The instructions were given in accordance with the order of the court which I had obtained. I furnished a certified copy of this order as his authority to act in the premises. I only gave him copy of one order; at least I think there was but one. I gave him the order of the court authorizing me both to take possession and sell. I saw the mules and farming utensils. The plows, &c., were so poor that I was neve rable to get an offer for them, tho' I had an agent who made diligent endeavor to sell. There was but part of a harness, I think; it, together with the buggy, were worth about fifty dollars; that would be a fair price for them. The plows had no market-value. I don't think they were worth five dollars in this market. The buggy was claimed
138 by a third party, and was delivered over to A. B. Long, the attorney of the claimant, under an order of court. It was afterwards sold upon his order, and the price paid to him. I never received the money nor any part of it. The bankrupt claimed $500 exemption under the act; and the furniture was delivered over to him or his attorneys.

(Objected to.)

(Signed) E. E. NORTON.

E. E. Norton, recalled, says:

McDaniel furnished to me a statement in writing of what he did—the property turned over to him, and that which was not turned over but which had been seized by the sheriff and inventoried. This paper I annexed to my answer herein, and is now annexed to the same as S'hedule "A," and is filed in the papers in this proceeding. Annexed to this testimony are certified copies of the orders made by the U. S. district court for the district of Louisiana, in the matter of N. G. Smith, bankrupt. They are the orders under which I acted in taking possession of and selling the property in question, and are marked E. E. N. N'. 1, & E. E. N. No. 2. The copy of the order given by me to McDaniel, as testified by me, is the one marked E. E. N., No. 2.

139 (Signed) E. E. NORTON.

Jurat and formalities waived as to all the witnesses.
NEW ORLEANS, *27th February*, 1871.

It is also admitted that the 20 days' notice prior to the filing of the supplemental bill was given as alleged.

(Signed) RACE, FOSTER & E. T. MERRICK.
(") AUG. DE BUYS.

Jurat and formalities waived, but all objection as to the legality and admissibility of the testimony under the issues made, reserved.

(Signed) RACE, FOSTER & E. T. MERRICK.

AUCTION SALE,

To take place on Wednesday next, 20th inst., 1868, at the court-house door, in the town of Marksville, the following described-property to wit:

1. Twenty mules.
2. One wagon.
3. One cart.
4. One buggy & harness.
5. Ten p'rs plantation harness.
6. Eighteen plows.
7. Four harrows.
8. Twelve hoes.
9. Three shovels 140
10. Six spades.
11. Five axes.
12. Two oil-lamps.
13. Twelve p'rs boys' shoes.
14. Two p'rs boots.
15. Sixteen p'rs men's brogans.
16. Five woolen coats.
17. Eight brown-linen coats.
18. Five lbs. flax thread.
19. One lot of combs.
20. Ten blacking-brushes.
21. One p'r small platform-scales.
22. One lot curry combs & brushes.
23. One blacksmith bellows.
24. Fifteen p'rs men's boots.

25. One gin-band.

Terms, cash on the spot.
Sale to commence at 10 o'clock, a. m.
Marksville, May 18th, 1868.

W'M McDANIEL,
Ag't for Knox & Norton.

E. E. N., No. 1.

Order: Rule made absolute.

District court of the United States of America for the district of Louisiana, holding sessions in the city of New Orleans term A. D. 187
New Orleans, Tuesday, the 9th day of April, 1871.
Court met pursuant to adjournment—

141 Present, the Hon. E. H. Durell, judge.

IN THE MATTER OF NATHAN G. SMITH, BANKRUPT. } No. 136.

For reasons orally assigned by the court, it is ordered and decreed that the rule taken by the assignees on 14th February, 1868, be made absolute, and that the sheriff of the parish of Avoyelles and Th's D. Marshall the seizing creditor, do deliver to said assignees the bankrupt's property seized by them, or if sold, the proceeds of the same.

CLERK'S OFFICE.

A true extract of the minutes of April 9th, 1871.
New Orleans, February 28th, 1871.
(Signed) K. LOEW,
D'y Clerk.

E. E. N., No. 2.

Copy of motion & order to sell.

U. S. district court. In bankruptcy.

IN THE MATTER OF N. G. SMITH, BANKRUPT. } No. 136.

On motion of H. D. Stone and A. B. Long, att'ys for Henry Knox and E. E. Norton, assignees herein, and upon suggesting that on the
142 8th April inst., this court decreed that Ducoté, sheriff of the parish of Avoyelles and Thomas D. Marshall, the seizing creditor, deliver to said assignees the property seized by them (including the hereinafter described) or if sold the proceeds of the same, and upon further suggestion that said property is perishable and liable to deterioration in value and that it is for the interest of all concerned that said property hereinafter described be sold without delay—

It is ordered that said assignees be and are hereby authorized and empowered to sell the said hereinafter-described property, at public auction or private sale, according to their discretion, at such time and place as they may elect, and deposit the proceeds thereof to await further order of this court herein.

Schedule of property to be sold by assignees under this order.

(1) one horse, (21) twenty-one mules, (1) wagon, (1) one cart, (18) eighteen plows, (4) four harrows, (12) twelve hoes, (6) six spades, (5) five pounds threads, (1) one gin band, (40) forty bushels corn, (100) one hundred pounds fodder, (2) two p'rs boys boots, (16) p'rs brogans, (15) fifteen p'rs boots, (3) three shovels, (5) five woolen coats, (8) eight linen
143 coats, (1) one pair scales, curry-combs, blacksmith's tools, (12) twelve p'rs boys' shoes, (10) ten setts planter's harness, (1) one lot sundries, (2) two lamps, (1) one buggy harness.

Let the sale be made as prayed for.

April 27th, 1868.

(Signed) E. H. DURELL, *Judge.*

CLERK'S OFFICE.

A true copy.

New Orleans, February 28, 1871.

(Signed) K. LOEW, *D'y Cl'k.*

Hearing and submission of cause before his honor W. B. Woods, presiding judge.—Extract from the minutes of February 28, 1871.

THO'S D. MARSHALL
vs. } No. 5581.
H'Y KNOX ET AL., ASSIGNEES.

This cause was called for trial—Race, Foster & E. T. Merrick, for complainant; E. Wooldridge, for defendants—when, after hearing the pleadings, evidence, and argument, the court took time to advise.

144 *Decree.—From the minutes of March* 27, 1871.

THO'S D. MARSHALL
vs. } No. 5581.
H'Y KNOX & AL., ASSIGNEES.

For reasons orally assigned by the court, it is ordered and decreed that complainant's bill be dismissed for want of jurisdiction.

Petition for rehearing and order thereon.—Filed March 30, 1871.

THO'S D. MARSHALL
vs. } No. 5581.
H'Y KNOX & AL., ASSIGNEES.

To the hon. the judges of the ciruict court of the United States for the district of Louisiana:

The petition of the above-named complainant, Thomas D. Marshall, respectfully showeth that your petitioner finds himself aggrieved by a decretal order made by your honors in this case on the 27th day of March inst., whereby it was ordered that this case be dismissed for want of equity.

And your petitioner submits that said decree is erroneous, because your petitioner shows unto your honors that he was and is without any remedy at law, and will forever lose his rights set forth 145 in his original and supplemental bill, unless this honorable court sitting in equity can grant him relief, for this, viz: that said decrees and orders of said district court sitting in bankruptcy stated in said original and supplemental bill, are a complete bar to any proceedings at law until the same are revised, annulled, & set aside, and this hon. court is by law invested with power to revise said orders of said district court sitting in bankruptcy and annul' the same. That complainant had a lien, privilege, and pledge upon said movables set forth in said bill of complaint, and at the filing of said original bill your petitioner had right to have said Knox and Norton restrained from selling said movables, and he had a right to have the same sold by order of a court of competent jurisdiction to satisfy said debt of $2,900, due by said Fuller and Smith to this petitioner for the rent of said plantation, as well as to have the proceeds of said property so applied in the event the same should come into the hands of said assignees.

146 That said Nathan G. Smith was only a part owner, in virtue of his partnership with said Fuller, of the property provisionally seized and subject to petitioner's lien. The law, upon the bankruptcy of Smith, transferred his legal title to one-half thereof, subject to said pledge and lien and proceedings in said State court to & upon said assignees, the defendants. A court of equity has the right to decree the property subject to liens to be sold, & proceeds applied to the payment of the debt.

That the circuit court was rightfully seized of jurisdiction where the suit was instituted, and petitioner was entitled to discovery and relief, and the defendants could not by their acts, in the absence of a circuit judge, and by reason of the inability of petitioner to obtain any order restraining said defendants, oust the said circuit court of jurisdiction of the case, and deprive it of power to grant complete relief to petitioner.

That this case was heard upon answer, replication, exhibits, and testimony, and defendants by their answer, filed June 1, 1868, assert that there are superior privilege upon said movables, and in their last
147 answer admit petitioner's right to have one-half of the proceeds of said property in their hands (which was subject to said lien and pledge) applied to the payment pro tanto of petitioner's claim against said Knox and Norton, and the point upon which this honorable court has dismissed said bill for want of equity was not raised in argument by defendants' counsel, and this petitioner has not been heard upon the same, & he thinks himself entitled to full relief upon his original and supplemental bills.

Your petitioner further shows that said decretal order has been settled; not yet signed or enrolled.

Whereupon your petitioner prays that your honors will be pleased to vouchsafe a rehearing of this cause before your honors, your petitioner submitting to pay such costs as the court shall award in case this complaint shall be found groundless. And your petitioner will ever pray, &c.

(Signed) By RACE, FOSTER & E. T. MERRICK,
Sol. for Petitioner.

We hereby certify that we have examined the case referred to in the foregoing petition, and are of the opinion that the decretal order therein mentioned is erronious in the particulars specified in said petition.

148 (Signed) E. T. MERRICK.
(") G. W. RACE.

Order.

Let the decree herein entered on the 27th instant be suspended until the court shall have acted on this petition.

March 30, 1871.

(Signed) W. B. WOODS, *Judge.*

Hearing, and submission of petition for rehearing.—Extract from the minutes of June 12, 1871.

Before his honor W. B. Woods, presiding judge.

THOMAS D. MARSHALL
vs.
H'Y KNOX & AL., ASSIGNEES.
} No. 5581.

The petition for a rehearing came up for trial—

Race, Foster & E. T. Merrick for complainant; E. Wooldridge for E. E. Norton, not present—

When, after hearing argument, the court took time to advise.

Order.—Petition for a rehearing dismissed.—Extract from the minutes of June 16, 1871.

149 THOMAS D. MARSHALL
vs.
H'Y KNOX & AL., ASSIGNEES.
} No. 5581.

For reasons orally assigned it is ordered and decreed that the petition for a rehearing be dismissed with costs.

Final decree.—From decree docket.

United States circuit court, fifth circuit, and district of Louisiana. April term, 1871.

NEW ORLEANS, *Monday, March* 27, 1871.

Court met pursuant to adjournment, present, Hon. W. B. Woods, presiding judge.

THO'S D. MARSHALL
vs.
H'Y KNOX & AL., ASSIGNEES.
} No. 5581.

For reasons orally assigned by the court, it is ordered and decreed that complainant's bill be dismissed for want of jurisdiction.

Decree rendered March 27th, 1871.

Decree signed June 17th, 1871.

(Signed) W. B. WOODS, *Judge.*

150 *Petition for appeal & order thereon.—Filed August* 1st, 1871.

THOMAS D. MARSHALL
vs.
H'Y KNOX & E. E. NORTON, ASSIGNEES.
} No. 5581.

To the hon. the judges of the circuit court of the United States for the fifth circuit, and district of Louisiana:

The petition of appeal of Thomas D. Marshall, a citizen of Louisiana, respectfully shews that a final decision was lately made by your hon. court at the city of New Orleans, in the case of your petitioner as complainant against Henry Knox and Emery E. Norton, assignees in bankruptcy of Nathan G. Smith, a bankrupt, being cause No. 5581, on the docket of said circuit court, and on the equity side thereof—the matter in dispute being over two thousand dollars and the decree having been signed on the 17th day of June, A. D. 1871.

Your petitioner further shews that he feels aggrieved by said decree, and believes that there is error therein to his prejudice.

151 Wherefore petitioner prays that an appeal be allowed him, returnable in the Supreme Court at Washington, and he tenders his bond with security according to law.

(Signed) By RACE, FOSTER & E. T. MERRICK,
Sol'rs.

Order.

The appeal in this case is allowed, returnable before the Supreme Court of the United States, at Washington, on the first Monday of December, A. D. 1871, upon appellant giving bond in the sum of five hundred dollars, with good and solvent sureties.

July 26, 1871.

(Signed) W. B. WOODS,
Judge U. S. Circuit Court for the 5th circuit and district of Louisiana.

Bond for appeal.—Filed August 1st, 1871.

THOMAS D. MARSHALL
vs. } No. 5581.
H'Y KNOX & AL., ASSIGNEES.

Know all men by these presents that we, Thomas D. Marshall, as principal, and Payne, Dameron & Co., and Edwin T. Merrick, of the city of New Orleans, as sureties, are held and firmly bound, jointly and severally, unto Henry Knox and Emery E. Norton, assignees in 152 bankruptcy of Nathan G. Smith, a bankrupt, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said assignees in bankruptcy of said Nathan G. Smith, a bankrupt, their heirs, executors, administrators and assigns, for which payment well and truly to be made, we bind ourselves and each of us by himself, and each of our heirs, executors, administrators, firmly by these presents, sealed with our seals, and dated the eighteenth day of July, in the year of our Lord eighteen hundred and seventy-one.

Whereas, the said Thomas D. Marshall has presented a petition to the honorable the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, praying for an appeal from a decree rendered in favor of the said Henry Knox and Emery E. Norton, assignees in bankruptcy of Nathan G. Smith, a bankrupt, defendants, and against said Thomas D. Marshall, complainant in cause No. 5581, of the circuit court of the United States for the fifth circuit and district of Louisiana, said decree being final, and signed June 17, 1871:

153 Now the condition of the above obligation is, that we, the abovebounden Thomas D. Marshall, and said Payne, Dameron & Co., & Edwin T. Merrick will well and truly pay to the said Henry Knox and Emery E. Norton, assignees, as aforesaid, the defendants in said appeal, all such damages as they may recover against us, in case it should be decided that the said appeal was wrongfully obtained.

(Signed) THOMAS D. MARSHALL,
Per E. T. MERRICK. [L. S.]
" PAYNE, DAMERON & Co. [L. S.]
" EDWIN T. MERRICK. [L. S.]

Signed, sealed, delivered in the presence of—

This bond is approved July 26, 1871.

(Signed) W. B. WOODS,
Judge U. S. Circuit Court for the
5th Circuit and District of Louisiana.

154 UNITED STATES OF AMERICA:
Circuit Court of the United States,
Fifth Circuit and District of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for fifth circuit and district of Louisiana, do hereby certify that the foregoing 153 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of Thomas D. Marshall vs. Henry Knox et al., assignees, No. 5581 of the docket, so far as the same now remain of record, or on file in said court.

Witness my hand and the seal of said court at the city of New Orleans this 10 day of October, A. D. 1871.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

[5-ct. int. rev. stamp, canceled.]

I, E. H. Durell, United States judge for the district of Louisiana, do hereby certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 10 day of October, A. D. 1871.

E. H. DURELL, *Judge.*

[5-ct. int. rev. stamp, canceled.]

155 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to Henry Knox and Emory E. Norton, assignees of Nathan G. Smith, a bankrupt, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to a petition and order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Thomas D. Marshall is appellant, and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this twenty-sixth day of July, in the year of our Lord one thousand eight hundred and seventy-one.

W. B. WOODS,
Judge U. S. Circuit Court for the 5th circuit &
District of Louisiana.

156 (Indorsed:) United States circuit court. No. 5581. Thom's D. Marshall vs. Henry Knox et al., assignees. Citation of appeal. To Henry Knox, assignee.

Marshal's return.

Received Aug. 1, 1871, by the U. S. marshal, and on the 7th day of October, 1871, served a copy of this citation on Henry Knox in the following manner, viz: By leaving it with E. R. Hogan, at No. 21 Camp street, who holds a power of attorney of E. R. Wooldridge, attorney for said Knox herein, Knox & Wooldridge being absent from the State at the time of service.

S. W. REED,
D'y U. S. Marshal.

NEW ORLEANS, *Oct.* 9, '71.

On this 9th day of October, 1871, personally appeared before me, the subscriber, S. W. Reed, and makes oath that he delivered a copy of the within citation as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn to & subscribed before me.

F. B. VINOT, *D'y Cl'k.*

157 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to Henry Knox and Emory E. Norton, assignees of Nathan G. Smith, a bankrupt, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a petition & order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit, and district of Louisiana, wherein Thomas D. Marshall is appellant, and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this twenty-sixth day of July, in the year of our Lord one thousand eight hundred and seventy-one.

W. B. WOODS,
Judge U. S. Circuit Court for the 5th Circuit &
District of Louisiana.

158 (Indorsed:) United States circuit court. No. 5581. Tho's D. Marshall vs. Henry Knox et al., assignees. Citation of appeal to Emory E. Norton, assignee.

Marshal's return.

Received August 1st, 1871, by the U. S. marshal, and on the 6th day of October, 1871, served a copy of this citation of appeal on E. E. Norton, assignee, by handing the same to W. A. Wells, a clerk of said Norton, at No. 18 Royal street, in this city, the said Norton being absent from Louisiana at the time.

S. W. REED,
D'y U. S. Marshal.

NEW ORLEANS, *Oct.* 6, '71.

On this 9th day of October, 1871, personally appeared before me, the subscriber, S. W. Reed, and makes oath that he delivered a copy of the within citation as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn to & subscribed before me.

F. B. VINOT, *D'y Cl'k.*

Edwin T. Merrick, one of complainant's solicitors, being first duly sworn, on oath saith that he this day delivered a duplicate of the within citation to the defendant, Emory E. Norton, assignee, in person, at his office, in New Orleans, this twenty-second day of November, A. D. 1871.

E. T. MERRICK.

Sworn to and subscribed before me this 22d day of November, A. D. 1871.

F. B. VINOT, *D'y Cl'k.*

159 THOS. D. MARSHALL
vs.
KNOX & NORTON, ASSIGNEES.
} No. 5581. Circuit court.

On appeal to Supreme Court of the United States.

To Edmund Wooldridge, esq., att'y & counsel for the defendant, Henry Knox:

Please answer whether you received the citation on appeal to the Supreme Court of U. S. or not in this case, November 22, 1871.

RACE, FOSTER & E. T. MERRICK,
Sol. for Complainant.

Yes, sir; I did.

E. WOOLDRIDGE.

(Indorsement on cover:) No. 426. Thomas D. Marshall, appellant, vs. Henry Knox and E. E. Norton, assignees of Nathan G. Smith. Louisiana C. C. U. S. Filed 27 November, 1871.

○

Supreme Court of the United States.

DECEMBER TERM. 1871, No. 426.

THOMAS D. MARSHALL, *Appellant,*

versus

HENRY KNOX AND E. E. NORTON, *Assignees of*
NATHAN G. SMITH, *a Bankrupt, Appellees.*

Appeal from the Circuit Court of the United States
for the District of Louisiana.

Brief and Argument for Appellant.

Eureka Printing Office, 33 Natchez St.

2d WARD.

2d PRECINCT.

Parish of Orleans.

2d WARD.

2d PRECINCT.

Parish of Orleans.

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Supreme Court of the United States.

DECEMBER TERM. 1871, No. 426.

THOMAS D. MARSHALL, *Appellant,*

versus

HENRY KNOX AND E. E. NORTON, *Assignees of*
NATHAN G. SMITH, *a Bankrupt, Appellees.*

Appeal from the Circuit Court of the United States
for the District of Louisiana.

Brief and Argument for Appellant.

POINT.

The Circuit erred in dismissing the suit for want of jurisdiction.

The complainant having the lessors' pledge and privilege for a large sum, upon a number of mules, a quantity of agricultural implements, and some supplies of considerable value, belonging to an agricultural partnership, his lessees, composed of Fuller & Smith instituted suit in a State Court having jurisdiction over the property and all parties and caused the property to be provisionally seized under the law of Louisiana to secure the payment of the rent. A little over a month after the seizure Smith alone voluntarily became a bankrupt and Defendants became assignees. By a rule taken by the assignees in the United States District Court in bankruptcy and resisted by the complainant and the Sheriff, they, complainant and Sheriff were ordered to deliver the pledged property, subject to the lessor privilege to the assignees, notwithstanding it was in the custody of the State Court. After an ineffectual attempt to appeal from the order, no Judge having been assigned to the Fifth Circuit, this suit was instituted to revise the decree of the District Court, in bankruptcy, and injoin the assignees until the order or decree could be reviewed by the Circuit Court, complainant having tendered bond to protect the right of any creditor claiming any right upon the pledged property. The *District Judge* refusing an injunction, but maintaining the suit on demurer, the assignees disregarded the suit and possessed themselves of the property subject to the privilege and pledge, and proceeded to sell the same without sufficient advertisements at great sacrifice, which facts are set forth at length in a supplemental bill. The bill and supplemental bill are substantially sustained by the proof.

As the Circuit Court was rightfully seized of jurisdiction to revise the decree of the District Court, and had power to restrain assignees until the case could be heard, and as such decree of the District Court was in itself a bar to all proceedings at law, or otherwise for the recovery of the pledge and as the subject matter was proper for the equitable jurisdiction of the Circuit Court, we maintain that the Circuit Court erred in concluding that complainants' remedy was at law and that the Circuit Court was without jurisdiction.

The bill *as amended* will be found printed in full at the end of this brief.

The bill was filed on the 29th of April, 1868, and the motion for an injunction was heard in the Circuit Court by the District Judge, May 4th, 1872, P. 6, who after considering the lease, and the transcript of the Avoyelles record, p. 6, refused the injunction, p. 13.

The Defendants demured to the bill, on the ground that twenty days notice had not been given them, and on the ground that the bill on its face shows no right in complainant to relief or discovery.

The District Judge also tried the demurer and overruled the same.

ABSTRACT OF BILL AS AMENDED.

Thomas D. Marshall, complainant, says that he is the owner of a plantation situated in the Parish of Avoyelles, La., known as the Walnut Grove, having about 500 acres of cleared land, on the same: that 7th February, 1867, one Nathan G. Smith, (the bankrupt) and one Henry W. Fuller, both citizens of Louisiana, composing a particular partnership, by a written instrument under seal bearing the said date, and signed by them, leased from petitioner and took to farm as lessees said plantation at the yearly rent of $6 per acre, making a total rent of $3,000 per annum, payable half yearly, viz: 1st January and 31st of December each year for the term of *three* years, and to end 31st December, 1869: See Exhibit, A, p. 7 and 8.

That Smith and Fuller took immediate possession of the plantation as lessees and that they cultivated the same and brought on to the plantation twenty-one mules, agricultural implements, more particularly described in the bill, and stated elsewhere, therein, to be worth $2,600.

That by the laws of Louisiana complainant had the lessor's privilege and *pledge* upon all of said property for the payment of his rent, and payment being neglected complainant instituted about 4th January, 1868, an action in the *Seventh District Court,* of the Parish of Avoyelles, being cause No. 5063, for the recovery of $1,400 of the last instalment of 1867, and exercising his right of *detention, privilege and pledge* as lessor, he caused the property to *be provisionally seized,* in order that the same might be sold under the judgment of the District Court of Avoyelles, La.; that the first instalment of the rent of 1868, is now due, making $3,900 due and $4,500 to fall due and *all effecting said property pledged:*

That after complainant had instituted said suit and process had been served on Smith and Fuller, in the only Court having jurisdiction over them, and said property (which sole jurisdiction is continued over said Fuller,) the said Smith, whilst the said suit was still pending, filed a petition in bankruptcy in the United States District Court of Louisiana, being No. 136 of said Court, and that said Henry Knox and E. E. Norton have taken upon themselves to act as assignees in said bankruptcy, and as such assignees they took a rule in the said U. S. District Court, on complainant and J. J. Ducoté, Sheriff of said

Parish, to show cause why on the 25th February 1868, the said Sheriff having the said property in his possession should not deliver it or the proceeds thereof, to said assignees and abid such order of said U. S. District Court, as might be deemed lawful. Whereupon such proceedings were had (although said rule was resisted) as to make the same absolute about 9th March, 1868;

That complainant feeling himself aggrieved by such determination of the U. S. District Court, by which he will be divested of his pledge and possession of said property, rightfully his by virtue of said contract of lease, and the law of Louisiana under which said contract was made and also deprived him of the benefit of his said suit instituted which will be defeated by such decree, not only as to said Smith's interest in said property, but *also as to said Fuller* and the firm therein, and to its complete jurisdiction over said Fuller, and costs incurred in that behalf, applied with said Ducoté to said District Court, sitting in bankruptcy for an appeal to the Circuit Court, but said assignees by counsel opposed before said Court,the allowance of an appeal from said decree upon said rule, and they were sustained, and complainant was thereby deprived of all redress in said proceedings, there being no Circuit Judge of the United States yet assigned to this Circuit, to whom he could apply for an allowance of appeal by all which said proceedings of said District Court herein before recited; your orator alleges that he has been and is aggrieved;

That his privilege, pledge and right of detention upon said property as lessor for the rent due, is superior to the right of any and all other persons, and he cannot be deprived of the same, either as against said partnership firm, nor said Fuller ;

That he has offered to said assignees to give them a bond to protect all persons creditors of said Smith, who may have any rights upon said property superior to your orator, if any such right can exist, and requested them to permit your orator to proceed with his said suit, in said District Court of the Parish of Avoyelles, against said Fuller, and said property subject to said right of privilege and pledge for the amount of rent due and to fall due ;

That said Knox and Norton contriving, etc., threaten to apply to said District Court in bankruptcy for some process to deprive said Sheriff and complainant of all right of detention and control over said partnership property, and said State Court of all jurisdiction over the same, not only as to said Smith, but also as to said Fuller. In consideration whereof *and for as much as your* Honorable Court is invested with a general superintendence and jurisdiction of all cases and questions arising under the Act of Congress, approved March 2d, 1867, etc., complainant prays :

1st. For a discovery.

2d. That the said orders of said bankruptcy Court be reviewed and rescinded.

3d. That defendants be restrained by injunction from proceeding under said decree and from taking possession of said property or interfering with the same.

4th. That complainant be permitted to subject said property without hindrance from said assignees to the payment of the rent.

5th. Should any of said property fall into the hands of said assignees, that they be ordered to deliver it to complainant, and

6th. For general relief.

The bill is supported by affidavit for an injunction, p. 4.

ABSTRACT OF SUPPLEMENT BILL:

P. 19—22.

It shows filing of original bill, etc., and that since the filing thereof and against the continued opposition and remonstrance of your order, the defendant took and received from the Sheriff of Avoyelles the greater part or all of said property set forth in the original bill of complainant, subject to your orators privilege and pledge as lessor, as in original bill set forth, and on or about the twentieth day of May, A. D. 1868, have illegally disposed of said property at an unjudicious time and without the usual and requisite ten days notices and advertisements, and without any authority from any Court or person authorized to dispose of or order the sale of the interest of *said Fuller* or said *Fuller and Smith* in and to the same to sundry persons unknown, and at prices below one-half the value of said property ;

That if any of said property has been lost or damaged as pretended by said defendants (of which he is not sufficiently advised) the defendants have occasioned such damage and loss by their unjust interferance with said property under seizure, and with the process of said District Court in said suit, in said Parish of Avoyelles, and thereby prevented your orators from inforcing his privilege and pledge, and realising the sums due him from said Smith, upon said lease, by means whereof said consignees are bound as well to account for whatever of said property may have been lost or damaged, after such interference of said assignees by the rule against your orator and said Sheriff, as for the property taken possession of and sacrificed by said illegal and informal sale : that said Fuller has left the State of Louisiana with all his other property, and he is now beyond the process of the Courts of Louisiana, and there is no other fund or property within the jurisdiction of the State which can be made available to pay said rent, besides said property seized and subject to your orator's privilege and *pledge:* that said defendants now pretend that said Smith and Fuller were not indebted to our orator in the sums set forth in the original bill for rent, and that they were the creditors of your orator for improvements, and that they are protected by the order of the U. S. District Court directing the delivery of the property to them, and pretend that the sale of the same was sufficient and formal, and that they are entitled to detain the whole of the funds received by them to pay themselves, the Clerk, register, and Marshal, and their counsel large sums for their supposed trouble and counsel fees, which they say will more than consume whatever they have received from said sale; that complainant avers the contrary to be the fact, and that said property could not justly be taken from his lawful possession under the order of said Court or otherwise, *without a pre-payment* of his said rent; that the said Fuller and Smith made no improvements; that having the *right* of pledge and privilege upon said property for the payment of said rent due and falling due under said contract of lease, complainant caused the interest of Fuller as well as Smith, in the property subject to the privilege and pledge to be provisionally seized according to the laws of Louisiana, as aforesaid, long before the bankruptcy of Smith, wherby having the *legal custody* by virtue of said seizure as well as the right of detention of, and lessors *privilege* and pledge upon said property which had never been parted with, neither said Smith and Fuller, nor their assignees, and much less the assignees of one of them had the right to take said property out of the custody of the law and deprive your orator of his right of privilege, pledge and detention of said property which he was exercising without paying him the amount due him, your orator, as rent upon the lease, as well as the amounts to fall due.

That the pretended sale made by the Defendants was illegal, informal and unjust, among other things in addition to those set forth in the original bill, in this, that the said assignees had no order of a competent Court obtained contradictorily with said Fuller for the sale of his undivided one-half interest in said property, subject to your orators' pledge and privilege, and there was no legal and sufficient order obtained for the sale of the property as

Smith and Fuller's and of Smith, and no notice was given as required by the rules of the Court, or as is usual and customary in Louisiana, of the time, place and terms of the sale of like property, and the same was negligently and wilfully sold on one days notice in a handbill obscurely posted in a country village, in which it was sold without any notice to the class of persons, viz: farmers and planters who have need of such property, and there was no publication in the newspaper published in its village, or in any newspaper elsewhere, and without the assistance of the officer authorized to make sales :

That complainant has been aggrieved by such orders of said District Court, mentioned in his original bill:

That said defendants are bound in equity and good conscience to account to your orators for the full value of said property, viz: $2,612, notwithstanding any pretended sale, loss, damage or sacrifice of the same, since the unjust interference set forth in this, and the original bill, by them, with your orators' said rights. Then follows a prayer for discovery, and that the orders of the bankrupt Court be reviewed, revised and rescinded, and that defedants be decreed to account to your orator for the full value of said property, notwithstanding any loss, damage or sacrifice of the same, since the illegal interference of said defendants with your orators' rights in the premises, and farther to pay over unto your orator all such sums of money as your orator may be entitled to have and receive, by reason of their wrongful doings in the premises, and that an account thereof may be taken under the order and direction of the Court, and for general relief.

ABSTRACT OF JOINT ANSWER OF DEFENDANTS' TO ORIGINAL BILL,

Filed July 1st, 1868.

They are advised and believe that complainant did lease unto the bankrupt Smith and H. W. Fuller, the Walnut Grove Plantation, so called, in the Parish of Avoyelles, substantially in manner and form, as in the bill of complaint stated, that the stock and agricultural implements named by the complainant, were put on the plantation by said lessee;

That the same were seized under a writ of provisional seizure, issued from the Seventh Judicial District Court, in and for the Parish of Avoyelles, together with about 1000 bundles of fodder and 40 bushels of corn, the product of said Walnut Grove Plantation, for the year A. D. 1867;

That respondents believe that at the time of said seizure was made, said bankrupt owed complainant only $1,400; and that said lessee had a first claim against lessor for $1,220, for repairs and permanent improvements in 1867, and the said bankrupt had, and these assignees have first set off in law and equity against claims of said lessor;

That they are advised and believe said bankrupt employed and hired in the cultivation of said plantation in 1867, certain laborers, viz: Austen Muller, and others, named in answer, say about 26, that these several persons by the laws of Louisiana had a privilege superior to complainant, especially on the crops of 1867;

That on or about the 15th of January, 1868, said Nathan G. Smith, lessee, was adjudicated a bankrupt by the United States District Court, for Louisiana;

That on the 12th of February, 1868, defendants were confirmed assignees of said N. G. Smith, and since that date have acted in good faith towards complainant and creditors;

That complainant never had such claim and privilege upon said *bankrupt's property* or any portion thereof, *as to entitle him to retain possession thereof, without the superintendance of these respondents;*

That under the order of said U. S. District Court, they have taken possession of all such of said property originally seized in the District Court of Avoyelles, as they could find and get control of;

That a great portion of said property was lost or damaged to the great injury of the estate, which these respondents are administering and by said complainant;

That said property so coming into their possession by order of the U. S. District Court, they have sold under its order, and they hold proceeds subject to distribution among the creditors of said bankrupt, as said U. S. District Court may direct;

That they deny they ever aggrieved or vexed plaintiff, and that he ever had the privilege claimed or is entitled to the relief prayed for.

In answer to interrogatories, they admit duplicate or original of lease to have been in their possession, and that exhibit, it is a true copy, they say they have not threatened to take said property out of the custody of said Sheriff of Avoyelles, but have often averred their intention of taking said property under and in complaince with the requisites of law. P. p. 15—17.

Amended separate answer of E. E. Norton:

According to his knowledge information and belief the horse, mules, wagon, cart, agricultural implements, carriage mule, harness, shoes, boots, brogans, coats, thread, gin-band and blacksmith tools, described in complainant's bill *were the property of the special partnership of Smith and Fuller*, but whether the same were brought on the plantation during the year 1867, this defendant has no knowledge or information, and therefore neither confesses nor denies the same;

That complainant did tender a bond to this defendant and his co-assignee, for an appeal from the decision of the U. S. District Court, which bond was conditioned to prosecute his appeal to effect and answer all damages and costs, and satisfy whatever judgment should be rendered against, but has no information or knowledge of any other bond, P. 22—23.

NORTON'S ANSWER TO SUPPLEMENTAL BILL,

March 1st, 1869.

He admits filing of original bill and its prayer as stated by complainant;

That on or about the 27th day of April, 1868, he did, by the laws of Louisiana had a privilege superior to complainant, especially on the crops of 1867;

That on or about the 15th of January, 1868, said Nathan G. Smith, lessee, was adjudicated a bankrupt by the United States District Court, for Louisiana;

That on the 12th of February, 1868, defendants were confirmed assignees of said N. G. Smith, and since that date have acted in good faith towards complainant and creditors;

That complainant never had such claim and privilege upon said *bankrupt's property* or any portion thereof, *as to entitle him to retain possession thereof, without the superintendance of these respondents;*

That under the order of said U. S. District Court, they have taken possession of all such of said property originally seized in the District Court of Avoyelles, as they could find and get control of;

That a great portion of said property was lost or damaged to the great injury of the estate, which these respondents are administering and by said complainant;

That said property so coming into their possession by order of the U. S. District Court, they have sold under its order, and they hold proceeds subject to distribution among the creditors of said bankrupt, as said U. S. District Court may direct;

That they deny they ever aggrieved or vexed plaintiff, and that he ever had the privilege claimed or is entitled to the relief prayed for.

In answer to interrogatories, they admit duplicate or original of lease to have been in their possession, and that exhibit, it is a true copy, they say they have not threatened to take said property out of the custody of said Sheriff of Avoyelles, but have often averred their intention of taking said property under and in complaince with the requisites of law. P. p. 15—17.

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That complainant did tender a bond to this defendant and his co-assignee, for an appeal from the decision of the U. S. District Court, which bond was conditioned to prosecute his appeal to effect and answer all damages and costs, and satisfy whatever judgment should be rendered against, but has no information or knowledge of any other bond, P. 22—23.

NORTON'S ANSWER TO SUPPLEMENTAL BILL,

March 1st, 1869.

He admits filing of original bill and its prayer as stated by complainant ;

That on or about the 27th day of April, 1868, he did, in the regular discharge of his duties with said Knox, obtain an order from the U. S. District Court, in bankruptcy, a legal and sufficient order authorizing the co-assignees to sell and dispose of the property mentioned in complainant's bill, at public auction or at private sale, at such time and place as they may elect, that soon thereafter, said co-assignees sent their Agent to Avoyelles, take possession of said property, said Agent, after a demand on the Sheriff Ducoté, did receive from him, the property mentioned in annexed schedule A. being a part of the property described and seized at complainant's instance;

That the remainder of the property originally seized by said Sheriff, was accounted for as lost, dead or stolen, as specified in the schedule;

That about the 20th day of May, 1868, the said Agent, for defendants having first advertised the same in a legal, proper and sufficient manner, proceed to sell at auction a portion of said property:

That another portion of said property offered but unsold and unsaleable at just prices at said auction, and certain household goods surrendered by said N. G. Smith, were brought to this city and are accounted for (with the remainder of said property) on Schedule A;

That he denies allegations of illegal procedure, but has acted fairly and for the best interest of the creditors of N. G. Smith;

That Fuller was a resident of the State up to June last;

That he believes that he has now left the State, but whether he left any property, has no knowledge;

That *he denies that he has claimed* or does claim to retain the *whole* of said fund received from said sale to pay himself, his co-assignee or their counsel or the clerk register, and marshal, but *does claim* that said fund is subject to claims to be paid by priority or preference, according to the 28th Section Bankrupt Act; 1867, among which should be recognized the cost and expenses of selling said property, and the Sheriff has presented a bill to assignees of $470, for keeping said property.

And defendant further says that, actuated by a *spirit of fair dealing and abhorance of litigation, he offered to said complainant*, provided proper permission of the Court could be obtained therefor, *to settle and pay complainant's claim, by paying to him the one-half proceeds of said property after deducting* therefrom the cost and expense of selling same;

Defendant denies all right in complainant to retain possession of or administer said property, or hold this defendant either alone or in conjunction with his said co-assignee responsible *for any further proceeds* thereof, than set forth in schedule A; as he has acted legally, promptly and wisely for the benefit of the creditors of said N. G. Smith.

In answer to the interrogatories, defendant admits that he and Knox did demand of the Sheriff, the property mentioned in complainant's bill, but that they have taken only a part, and sold a greater part, and realized only $1,278 45, gross.

Defendant sets forth a list of said property but cannot answer to what person each mule was sold, and the specific amount received from each.

And defendant claims that said fund realized by the sale of said property mentioned herein, should be considered the measure of the value of said property. P. 24 to 25.

ANSWER OF KNOX.

He *says the duties were wholly performed by E. E. Norton, and proceeds went into Norton's hands*, which is correctly set forth in Norton's answer. He has not sufficient information of supplemental bill to enable him to form any conclusions as to their correctness, p. 28. Filed March 27th, 1869. Replication 5th April, 1869, page 29.

Agreement that delay should not prejudice either party in taking testimony. Filed July 1st, 1869, p. p. 29, 30.

As the case went off on the question of jurisdiction in the lower Court, counsel does not expect the Court will undertake to state an account on the reversal of the decree, but will remand the case to the lower Court, to be referred to a master, and as the case stands on complainant's allegations which are substantially admitted, it will not be necessary to refer to much of the testimony.

The following matters may be stated. None of the laborers mentioned in the answer appeared in bankruptcy or set up any claim to a privilege on the property.

Before filing the supplemental bill, notice was served for 20 days on Knox and Norton. p. 46, 51.

The property was sacrificed; Ducoté and his deputy who had the best means of knowing the neighborhood, as well as the value of it, say that, on the 18th day of May, hand bills were posted to sell on the 28th of the same month; that planters were the parties who would most likely purchase such property, and that ten days notice ought to have been given to procure their attendance, and that the property was worth over $2,000, p. p. 34, 35, 37. Leonard testimony, 35. Gen. Orders No. XXI.

Bond with security was tendered before filing bill on behalf of the complainant, to the assignees to protect any creditors who might have any claims or privileges upon the property provisionally seized in the Parish of Avoyelles, in the case of Marshall vs. Smith and Fuller, superior to the lessor's privilege claimed by Marshall, and Norton was requested to allow Marshall to proceed and sell the property in the State Court. Norton refused. Merrick's testimony, p. 37.

Copy of record of suit of Marshall vs. Smith and Fuller in State Court, showing the provisional seizure of the property by the Sheriff, and his custody is found on p. p. 6 to 12.

Order of U. S. District Court to show cause, 25th February, 1868, why the Sheriff should not deliver up the property or proceeds to Sheriff, p. p. 38 and 39.

Answers in writing to the rule, are found p. p. 41 and 42, in which the lease, the indebtedness, the provisional seizure and suit, the pledge, the joint indebtedness and right of Fuller, the saving of expense, etc., etc., were set up, and urged at length, and proven by the record, p. p. 41, 42.

Decree ordering the Sheriff and Marshall to deliver the property or proceeds to assignees, p. 42, 43.

Notice of appeal therefrom, p. 43.

Petition of appeal and bond, 44.

Rule by Knox and Norton, to dismiss appeal because neither of said applicants is alleged or *proved creditor of said bankrupt*, that neither of said applicants has been aggrieved by the order, that this appeal is not authorized under the 8th Section of the Bankrupt Law; that the decision rendered is not such a final decree either in law or equity, as entitles Ducoté or Marshall to appeal; that Ducoté being simply an executive officer, has no interests which Courts can protect by appeal, p. 43.

24th April, 1868, rule taken by assignees was tried and it was "ordered that the rule be made absolute, and the appeal asked for refused with costs." P. 45.

It is officially known that at this time, in 1868, there was no Circuit Judge in the Fifth Circuit, and no other course remained to complainant who had exhausted all remedies in order to protect his rights, but to apply to the Circuit Court, by bill in equity or petition to correct the erroneous rulings of the U. S. District Court.

At that time the complainant seeking an injunction, chose the remedy by bill, which was filed five days after his application for an appeal was refused him, p, 29.

It would have been more in conformity with practice, had the District Judge suspended proceedings in his District Court, after the filing of the bill, until a hearing could be had, instead of reviewing as a Circuit Judge, his own orders, so far at least, as to permit their execution.

ASSIGNMENT OF ERRORS.

The lower Court erred in dismissing the complainants bill for want of jurisdiction. Rec. p. 58. It ought to have maintained the suit rescinded the orders and referred the case to a master to state the account against defendants or to have rendered a decree at once in complainants favor.

BRIEF OF THE ARGUMENT.

(Before proceeding, we add the following omitted *authorities* on the effect of the contract of *lease*, which should have been added to p. 19 of this brief:

Ledoux vs. Jones, 20 Ann. R. ,540.

Holden vs. Tauner, 6 Ann. R., 75

Reynold vs. Swain 13 L. R., 194.

Roumage vs. Blatrier, 11 Rob. R. ,101.)

The question is, had the Circuit Court of the United States, on the 29th day of April, 1868, on the filing of the bill, jurisdiction of the case.

If it had, we lay it down as an undeniable proposition that the defendants could not, with a high hand defeat that jurisdiction which was vested : that this Court, after jurisdiction vested, will take care to see complete justice done its rightful suitors, without sending them to another jurisdiction for redress. Were it otherwise it would be an imperfect jurisdiction which any suitor might defeat.

To consider then the question, we must examine complainant's rights, under the laws of Louisiana, and not as lessee at common law.

It is a maxim of the Civil Law that, *the land-lord possesses by his tenants*. C. C. 3396. 23 A. 606. Arick vs. Walsh.

Hence, whence the Civil Code declares that, the landlord has both a privilege and a *pledge* upon the effects o the tenant brought on the place, it declares an *actual real and vested right, as perfect and indefeasable as any other right.* C. C. 2675. 3185, 3223. Barbour vs. Duncan, 17 L. R., 443. Garetson vs. Creditors, 1 Rob. 445. 3, Am. 704. Robb vs. Wagner, 5, Ann. 112 Arick vs. Walsh, 23. Ann. 605. 21 A. 553. CC, 3225,

By the law of Louisiana, the contract of lease is an *entire contract for the whole term*, and the privilege and pledge act on the property for the whole term. Courts of justice can only for just cause, rescind the contract. C. C. 2698, 2700, 2702, Segur vs. Lloyd, 1 Ann. 422. Bartels vs. their Creditors, 11 Ann. 433,. C. C. 287, Amendment, Acts 1839. p. 172, Sec. 22. Wilcox vs. Bowles, 1, Ann. 230, Code of Practice 870. Sec. 287, incorporating Sec. 22 of Act 1839, above stated. Hynson vs. Cordukes, 21, Ann., 553 554. 23, Ann. 605

The bankrupt act was never intended to rescind contracts and divest vested rights, and the assignees in the language of Mr. Justice Bradley have not the king's prerogative which brooks not divided domain with a subject.

They only succeed to the rights of the bankrupt just as they are; they cannot despoil a creditor of *his pledge*, in order to *sell it to pay fees* to themselves or their attorneys. Stoddard, assignee, vs. Weaver, decided in Louisiana Bankrupt Act, Section 14. 13 Stat. at Large, page 522.

The main clause of this Act means nothing more. It conveys to the assignee "all the estate, real and personal, " of the bankrupt, with all his deeds, books and papers " relating thereto, and such assignment shall relate back " to the commencement of said proceedings in bankruptcy, " and by operation of law, the title to all such property " and estate shall rest in such assignee, although the same " is then attached on mesne process, as the *property* of " the debtor and shall dissolve any such attachments " made within four months next, preceding the commencement of said proceedings, p. 522. Then to leave, no " doubt, at the foot of the next page it provides that the " assignee shall have authority, under the order and direction of the court, to redeem or discharge any mortgage, or " conditional contract or *pledge, or deposit*, or lien upon " any property, real or personal, whenever payable and tender due performance of the condition thereof, or to sell the same, subject to such mortgage, lien or other incumbrance.

A preceding clause in the same Section is to the same effect. "And he (the assignee,) may sue for and recover the said estate, debts and effects, and may prosecute and defend all suits at law and in equity, pending at the time of the adjudication of bankruptcy, in which said bankrupt is a party in his own name, in the same manner and with the like effect, as they might have been prosecuted and defended by such bankrupt," p. 523. Also, 15 Stat. 228. The 20 Sec. 13 Stat, p. 526 implies the same rights.

It would seem to be superfluous to cite authorities to show that the assignee could not have any greater *rights of property* and possession than the debtor. Complainant held, in pledge, the property of his *two* debtors, and instituted proceedings in a state court against *both*, and had the pledge, to secure the same, *taken into the custody of the law*, under a provisional seizure, ordered by a state court. One debtor subsequently went into bankruptcy, and our adversaries contend that the assignee, of *one of the debtors*, can disregard the right in the pledge and possession, and without paying the debt, take the property out of the custody of the state court, and thus deprive the pledgee of his possession of the property of his two debtors.

If so, the Bankrupt Act *divests vested rights in possession*, for neither of the debtors, nor both together, could release the pledge, and take it out of possession of the pledgee and the sheriff, without paying the debt. If so, the law conveys to the assignee greater rights of property and possession than the bankrupt had, which is absurd. C. C. 3140 Bacon's Abridg. Bailment B. 2 Black Com. 396, Bouv. Inst. p. 423, Sec. 10,46.

The bankruptcy only placed the parties in this position; Marshall was still entitled to the *possession* of his pledge for the payment of the debt, as a legal right and the assignees became owners of one-half with Fuller of the naked property subject to the pledge, and had the right to redeem the property on paying the debt and nothing more. Exparte Newhall, 2, Story, 360. Fletcher vs. Morey, Ib. 555. Mitchell vs. Winston, Ib., 630. Re. Buse, 3, Bank, R. 52. Thompson vs. Beatson, 7 Moore, 548. How vs. Bartlette 8, Allen, 20. *

But they pretend that the bankruptcy gave them a right over the *whole* pledge, and that they could take it alike in disregard of the séizure of the whole interest, by the State Court, in a suit against both, and in disregard of the right of possession and pledge, given by the contract of lease under the law, and in disregard of the offers of indemnity by complainant.

In our opinion the case turns on the correctness of this assumption of the defendants ; for if an assignee of one, of two partners has this extraordinary power over the partnership effects lawfully pledged and lawfully under seizure in a State Court, the only Court having jurisdiction at the time, in a suit with due service on boih partners, then bankruptcy, divests, vested rights and annihilates contracts, and there was no ground for revising the judgment of the District Court.

* Story on Agency S 371
Russell on Factors P. 191. 195. 128. 208.
1 Harrison's Dig. P. 1030
2 Kent 641.
Bankrupt act Sec. 14. Rule XVII
General Orders in Bankruptcy [illegible] 283 28

We have already attempted to show that pledgees right of possession cannot be divested by the bankruptcy of one of the pledgors.

We think, also, it is quite clear that if there had been no suit and Smith and Fuller had been in the actual possession of the sequestered property, prior to the bankruptcy, that the assignee of Smith could not have taken the property out of Fuller's possession, if the latter were willing to account for the bankrupt's share, and endemnify against the joint creditors. Hilliard on Bankruptcy, p. 63, No. 17. Allen vs. Kilbre, 4, Mad. 464 C. C. 2797. McKeage vs. Bank, 11 Rob. 136. Pittman & Barrow vs. Robicheau, 14, Ann. 108. C. C. 2794, Succession of Beer, 12, Ann. 698. Thomas vs. Lusk, 13, L,tR. 277. Carvin vs. Bates, 10, Ann, 756. 5, Cranch, 301, 302, 5 Vesey, 357.

The assignee of one partner has no claim to the partnership property until he pays what is due from the bankrupt to the firm. Holderness vs. Shackelson, 8, B and C. 611. Smith vs. O'Niell, 1, East. 368.

Complainant having seized the joint property of his debtors pledged to him, and tendering security stood in quite as favorable a position as Fuller.

Again the property being lawfully in the custody of the State Court, against *two* defendants, over whom the State Court, at the time of the institution of the suit, had jurisdiction, the District Court of the United States ought not to have deprived the State Court of jurisdiction over, and the custody of the property, subject to the pledge, and its decree should be rescinded.

20 Howard 583 Taylor vs. Carryl

Buck vs. Cobbatt, 3 Wal. 334, Mr Justice Miller in Woolworth Johnson vs. Bishop, Sheriff, ~~Wodarth~~ 324.

Peck vs. Jenness, 7 Howard, 612, 625, 626.

Gayerre vs. Tunnard, 9 Ann. 254. Bump. Ed. 1871, p, 246, 301. Campbell's case, 1 Abbott,. U S. 185. Herndon vs. Howard, 9, Wal. 664. Taylor vs. Carryl, 20, H. 595--598, 9, American Law Reg. 307. Clark vs. Bininger, Burns case, 7, Am. Laws Times, 105. Sherman vs. Hill, 40, Ga. 257, 5, Am. Law. Review 669. Diggs & Kuth vs. Walcott, 4 Cranch, 178. Rogers vs. Cincinnati, 5 McLean, 340, M. 2, Am. Laws Times, p. 50, and cases cited. Wiswall vs. Sampson, 14, H. 52,

We now assume that the District Court erred in ordering the Sheriff and complainant to deliver the pledged property of the partners Fuller & Smith to the assignees of Smith.

The next question arrises, what remedy had the complainant to protect himself against the order?

The *State* District Court in provisionally seizing the property to hold the same subject to the lessor's right of pledge in order to decree it should be sold to pay the debt, was exercising *equity powers*. C. P. 284, 285. Gaulden vs. McPhaul, 4, Ann. 81. C. C. 3124, 3132, 8. Rob. 11.

The decree of the U. S. District Court was under the law of Louisiana a complete bar to any suit at law or in equity to recover the property or its proceeds. So long as it stands, the complainant is deprived by its effect of his vested rights over the property pledged in the custody of the Sheriff.

Foss vs. Brentel, 14, Ann. 798. 19, L. R. 318. 12, Ann. 197.

It has the same effect under the laws of the United States. Huston vs City Bank. 6, H. 486. Cock vs Halsey, 16. Peters, 87, 6, H. 504. 2, Ann. 115, Shows proceedings were on a rule and petition. Fraser vs. Weller, 8, McLean, 11.

He endeavored to appeal from the decision by which he felt himself aggrieved, but he was at the instance of defendants, refused an appeal by the District Court. Defendants do not deny the correctness of this decision. See Chief Justice Chase decision in Re. Alexander, 7, Law Reg. 423.

At that time there was no Judge allotted to the Fifth Circuit, as this Court judicially tenders, and there was no means of compelling an appeal by mandamus.

Nothing then remained to the complainant but to file proceedings in the United States Circuit Court for an injunction and revision of the decree of the United States District Court of which he complained, in order to inforce the sale of the pledge.

It follows therefore, most clearly, that on this ground the Circuit Court of the United States was seized of complete jurisdiction, on the 29th day of April, 1868, when the bill was filed, and it then and there had power to *rescind* said erraneous order and *enjoin* defendants from taking possession of the pledge without paying the debt.

Since that day it has never been in the power of the defendants, by any act of theirs in contempt of plaintiff's rights to defeat the jurisdiction.

The case becomes still stronger, we think, when we consider that the assignees, holding as trustees and fiduciaries only succeed to the right of *one* of the *two* pledgors, and that the suit and provisional seizure in the State Court was against *two pledgors*, one of whom had never been declared a bankrupt, and over whom no other court had jurisdiction.

The Act of Congress allows the Circuit Court to revise the proceedings of the District Court by bill in equity, or petition, or other proper powers; *the defendants cannot complain because the most formal of the remedies was adopted.*

The language of the law is the Circuit Court of the United States; ' shall have a general superintendance and jurisdiction of *all cases and questions* arising under this Act; and except when special provision is otherwise made, may, upon *bill, petition or other proper process*, of any party aggrieved, hear and determine the case as a court of equity." *Sec. 2 Bankrupt Act.*

The Statue recognizes both modes of proceedings, by bill or petition, and the Court shall hear and determine the case as a court of equity. For such purpose it surely could not be objected; as just said: that the most formal mode of proceeding for the purpose contemplated, viz: to obtain the decree of the court which was to decide as a court of equity was adopted.

In Langley vs Perry, decided by Mr Justice Swayne, the proceeding was by bill 8 Am. Law Reg. 427. See also, Ruddick vs Billings, 1 Woolworth 337 and note p 339.

The subject matter, aside from the review and injunction, was proper for a court of equity. Matheson vs Bancus, 1 Comstock 296. Baily vs Burton, 8 Wendell, 347, 348. Willards, Eq., 458, 1 Storey, Eq, § 506. Black vs. Brennan 5 Danna, 312, Smith Manuel, Eq., 52.

Under the Massachusetts laws, the practice to obtain a review was also by bill. See Bernard vs. Eaton, 2, Cushing, R 301. Mass. Iron Co. vs Hooper, 7, Cushing 183. Fletcher vs Morey. 5, Story 555. 1, Paige, C R 220. Avery vs Hobbs, 161. Eastman vs Foster, 8, Metcalf, 20

We assume therefore, that when the *bill was filed* by complainant, as pledgee, praying a review of the eroneous decree, and for an injunction, that the Circuit Court of the United States was rightfully seized of full, complete and ample jurisdiction over the case, to revise the decree and prevent its execution until it could be considered.

Could the defendant, by taking advantage of their position and by their obstinacy deprive the Circuit Court of such jurisdiction?

Fonblanque says: " When this Court can determine ,, the matter, it shall not be an hand-maid to other Courts." Book, 6, Ch III, Sec 6. 1 Blatch. 235, McAlmont vs Lawrence. Hepburn vs Dunlop, 1, Weaton, 197.

The Court does not lose jurisdiction by change of condition of parties. Conolly vs Taylor, 2, Peters, 556. Once vested it cannot be defeated. Winters vs Zacharie, 6, Rob. 468.

In speaking of discovery, Judge Story says the jurisdiction having once rightfully attached, it shall be made effectual for complete relief. § 64, K 71. 1, Story, Eq. See Hawley vs Cramer. 4, Cowen, 718, 719.

The jurisdiction of a Court of e quity would become contemptible if it were to be held that it was in the power of the defendant to oust the Court of jurisdiction once rightully vested. See Alney vs Wilbur, 2. Woodbury vs. Minot. 405.

But we understood, as already observed, the Circuit Judge to decide that complainant's remedy was at law, and that he should have brought an action for damages.

The answer to this is:

1st. That the Act of Congress gives complainant the power to have the decision of the U. S. District Judge reviewed by the Circuit Court, and, as a necessary incident, a right to *restrain the execution of the order until it is reviewed*.

2d. That so long as the decree which was made contradictory with the complainant, stood in force, it was by the law of Louisiana and of the United States a complete bar to any proceedings at law or in equity, as we have shown.

3d. Comity required that the Superior Court should prevent an inferior Court from wantonly and unnecessarily interfering with another distinct, and in a qualified sense, independant jurisdiction.

4th. An action of damages might be illusory, and camplainant was not bound (especially as there is no difference as to injunction, as it respects, real or personal property in Louisiana,) to wait until he is dispoiled of his property, and the tribunal of his domicil is ousted of jurisdiction.

5th. Courts of equity could alone prevent by injunction the decree of the U. S. District Court being carried into effect.

6th. The Circuit Court alone could revise the erroneous decree of the Bankrupt Court, which stood in the way of any recovery.

7th. The suit in the State Court was in the nature of a suit in equity. C P 284, 285, and equity has jurisdiction over suits, to enforce the rights of the pledge and to state the account, and order the distribution of the proceeds. Hence, after defendants, in contempt of plaintiffs rights had possessed themselves of the pledge, they were chargeable as trustees, holding as they do, for the benefit of others, as well as representing one of the pledgors for the proceeds, which became subject to the lien, and as a consequence to the jurisdiction of a Court of equity.
See Bleck vs. Brenan, 5th, Dana, 312. Alney vs. Wilbur, 2, Wood. and M. 405.

8th. It was objected in the Court below, that there were laborers who were entitled to a privilege on the property, subject to the lessors' privilege, whom the assignees of the bankrupt ought to see protected. The wolves protecting the lambs.! The reply is, that there is not a shadow of proof, that the laborers had any claims, that laborers at the time the contract was entered into, February 7th, 1867, had no privilege, except upon the crops, which defendants show were consumed: that their privilege are protected only by being recorded; that *no laborer* nor any *other creditor* has proved a claim against the bankrupt; that if the laborers had had claims, nothing was easier than to intervene in a Court at their own doors, favorable to their race, and claim it; that the pledgees lawful possession cannot be defeated by mere assertions of defendants. See Barbour vs. Duncan, 17, L R 443. Lauran vs Holtz, 1, N S 140..

Complainants' right could not be divested. Succession of Taylor. 10, Ann. 509. McCracken vs Hayward, 2, C. H. 608. Smith's Com. On. Const. Law. Sec 258, p. 392 Green vs Biddle, 8, Wheaton, p 1. 8 Wheaton, 75. Bronson vs Kinsie. 1, H. 311.

Twenty days notice of the filing of the supplemental bill in which the assignees are sought to account for value was given.

The original bill did not seek to charge them in any other than their fiduciary capacity, and did not admit of or require notice. 3, Black. Com. 16, 3, Harrison's Dig. p. 6350, G.

9th. The answer virtually admits the right of the complainant to *one-half* of the proceeds of the property, subject to his lien and pledge, after deducting costs and charges. With this admission of right to so much of the funds in the hands of these fiduciaries and trustees, how can it be held that the Circuit Court sitting in equity, is without jurisdiction?

10th. It was objected that defendants had accounts which should be allowed as offsets for repairs, etc.. The complication of the accounts instead of showing a want of jurisdiction in settling the amount of the lien, shows the contrary. 1, Story Eq. See 506, already cited.

The pretence that there were improvements is however disproved. Marshall, p 33. Ans. 5, Interrogatory.

The complainant, the sole creditor of Smith and Fuller, who has been willing to give, and has tendered a bond to the assignees, to protect any creditor who might set up a claim to the pledge, in the custody of the State Court, has found all his efforts baffled by the assignees, who could have had no other object than to subject his pledge to the payment of costs, fees and charges, and he is thrust out of Court, and told that the Circuit Court was without jurisdiction to revise and rescind the erroneous order which deprived him of his vested rights, without jurisdiction to restrain the execution of that order, and without jurisdiction to compel the assignees to account for the proceeds of the things pledged, obtained in violation of their duties, and in defiance of the equitable powers of this Court.

This case is worthy of the consideration of this high Court. It is only one bankruptcy out of a thousand in which Mr. Norton has acted as public assignee, solely or with the assignee chosen by the creditors under a general order of the District Court requiring his appointment, and here you see property worth over $2000 wantonly taken out of the jurisdiction of a State Court, from the only creditor, and manipulated so that according to defendant's answer it will leave complainant only $500 to pay costs, and *that* $500 to be taken out of the half that it is admitted belonged to Fuller, and never was Smith's.

Whereas, if the State Court had been permitted to proceed with the pledged property in its custody, and jurisdiction, the *creditor* would have been speedily paid something, and the debt extinguished pro tanto by sale of the thing pledged.

We appeal to this Court to know if there is not redress, and if the bankrupt act must be so construed, as to be a blight and a curse, instead of a blessing to a business community.

GEO. W. RACE AND
E. T. MERRICK,
For Complainant.

THOMAS D. MARSHALL, *Appellant*,

versus

HENRY KNOX AND E. E. NORTON,

Assignees of Nathan G. Smith.

BILL AS AMENDED.

To the Judges of the Circuit Court of the United States, for the District of Louisiana. .

Thomas Douglas Marshall, of the vicinity of Evergreen, Parish of Avoyelles, and a citizen of the State of Louisiana, brings his bill against Knox and E. E. Norton, assignees of the City of New Orleans, and citizens of the State of Louisiana; and thereupon your orator complains and says that he is and has been for several years past, the owner of a plantation situated in said Parish of Avoyelles, in said State, known as the Walnut Grove Plantation, having about five hundred acres of cleared land upon the same; and that on or about the seventh day of February, A. D. 1867, said Nathan G. Smith and one Henry W. Fuller, both citizens of Louisiana, composing a particular partnership by a written instrument under seal, bearing the same date and signed by them, leased of and from petitioner, and took to farm as lessees said plantation at the yearly rent of *six dollars* per acre, making a total rent of *three thousand dollars per annum*, payable half yearly, viz : one half on the first day of January, and the other half on the thirty-first day of December of each rented yea , which said lease was to continue for the *term of three years*, and on the 31st day of December, A, D. 1869, all of which will more fully appear by reference to exhibit A.

Your orator further shows that said Smith and Henry W. Fuller, took immediate possession of said plantation as lessees under said contract of lease and cultivated the same during the year A. D. 1867, and brought upon the same the following, among other property belonging to said partnership, viz : one horse, twenty-one mules, one wagon, one cart, eighteen plows, four harrows, twelve hoes, three shovels, six spades, six axes, curry combs, one set of blacksmith tools, one carriage, two lamps, twelve pairs of boys' shoes, one buggy harness, two sets planters' harness, two pairs boy's boots, sixteen pairs of brogans, fifteen pairs of boots, five woolen coats, five pounds of thread, one ginband, one pair of scales, and one lot of sundries estimated at the sum of twenty-six hundred and thirteen dollars, including 1000 bundles of fodder and forty bushels of corn.

Your orator further represents, that by the laws of Louisiana, he had the lessors' privilege and pledge upon all of said property above described, for the payment of his rent, and finding that said partners Smith and Fuller had neglected to pay the said rent due by them, to your orator, instituted on or about the 4th day of January, 1868, an action against the said firm of Smith and Fuller, in the Seventh District Court, in and for the Parish of Avoyelles, being No. 5063, of the same, for the recovery of fourteen hundred dollars of the rent, which had fallen due as the last instalment of A. D., 1867, and exercising his right of detention, privilege and pledge, as lessor caused the property herein above described, to be provisionally seized, in order that the same might be sold nnder the judgment of said District Court, to be held in and for said Parish of Avoyelles, in said State. to pay said rent.

Your orator further shows that the first instalment of the rent of A. D., 1868, is now also due, making $3,900, and $4,500 to fall due, and oll affecting said property pledged.

Your orator further represents, that he had instituted his said suit against said firm, and service of process had been made upon both said Smith and Henry W. Fuller, in the only Court having jurisdiction over them and said property, which said sole jurisdiction is continued over said Fuller, the said Smith, whilst said suit was still pending, filed a petition in bankruptcy, in the District Court of the United States, for the District of Louisiana, being No. 136 of said Court; and thereupon the said Henry Knox and E. E. Norton have taken upon themselves to act as assignees in said bankruptcy, and as such assignees they took a rule in said United States District Court. upon your orator and J. J. Ducoté, Sheriff of said Parish, to show cause on the 25th day of February, A. D. 1868, among other things why said Sheriff, having said property in his possession should not deliver said property or the proceeds thereof to said assignees, and abid such other order of said District Court, as might be deemed lawful, whereupon such proceedings were had (although said rule was resisted by your orator)as to make said rule absolute on or about the ninth day of April, A. D. 1868.

And your orator feeling himself aggrieved by such determination of said District Cout, by which he will be divested of his pledge and possession of said property, rightfully his, by virtue of said contract of lease and law of Louisiana, under which said contract was made. and also deprive him of the benefit of his said suit at law, instituted against the said firm, which will be defeated by said decree, not only as to said Smith's eventaul interest in said property, but also as to the interest of said Fuller, and the firm therein, and as to its complete jurisdiction, over said Fuller, and costs incurred in that behalf, he, your orator and said Ducoté applied to said District Court sitting in bankruptcy, for an appeal to your Honorable Court, but the same coming to the ears of Knox and Norton, assignees, they, by counsel apposed before said Dist'ct Court in bankruptcy, the allowance of an appeal from said decree upon said rule, and they were sustained by said Court, and your orator was thereby deprived of all redress in said proceeding, there being no Circuit Judge of the United States yet assigned to this Circuit, to whom he could apply for an allowance of appeal, by all of which said proccedings of said District Court, hereinbefore recited, your orator alleges that he has been and is aggrieved

Your orator further shows, that his privilege, pledge and right of detention upon said property as lessor, for the rent due and to fall due, is superior to the right of any and all other persons, and he cannot justly be deprived of the same, either as against said partnership, firm or the said Henry W. Fuller.

Your orator further represents, that he has offered to said assignees to give them a bond to protect all persons, creditors of said Smith, who may have any rights, upon said property, superior to your orator, if any such right can exist, and requested them to permit your orator to proceed with his said suit, in said District Court of the Parish of Avoyelles, against said Fuller and said property, subject to said right of privilege and pledge, for the amount of rent due and to fall due.

And your orator had well hoped that no disputes would have arisen touching your orator's right to proceed in his said suit, against said partnership, property and his right to enforce his pledge upon the same, not only to the extent of fourteen hundred dollars, due upon said lease at the commencement of said suit for that year, but also for the further sum of fifteen hundred dollars, now due on the present year, viz: to the extent of twenty-nine hundred dollars now due upon the same, but that the said defendants would have complied with the reasonable request of your orator, as in conscience and equity, they ought.

But now, so it is, may it please your honors, that said Knox and Norton absolutely refuse to comply with said request, and contriving how to wrong and injure your orator in the premises, threaten to apply to said District

Court in bankruptcy for some process to deprive said Sheriff and your orator of all right of detention and control over said partnership property, and said State Court of all jurisdiction over the same, not only as to said Smith, but also as to said Fuller; all of which actings and doings and pretences are contrary to good conscience, and tend to the manifest wrong, injury and oppression of your orator in the premises. In consideration whereof, and for as much as your honorable Court is invested with a general superintendence and jurisdiction of all cases and questions arising under the act of Congress, approved March 2d, 1867, and your orator is entirely remediless in the premises according to the strict rules of the common law, and can only have relief in equity were matters of this nature are properly cognizial and retrivable.

To the end therefore, that said defendants may, if they can, show cause why your orator should not have the relief hereby prayed, and may upon their several and respective corporal oaths and according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct and perfect answer, make to the premise and to such of the several interrogatories hereafter numbered and set forth as by the note hereunder written, they are required to answer that it is to say:

1st. Whether they have not had in their possession the duplicate of or original of a contract of lease of said Walnut Grove Plantation, bearing date, 7th day of February, A, D. 1867, signed by your orator, said Henry W. Fuller and N. G. Smith, aud whether the annexed exhibit marked A, is not a true copy of the same.

2d. *Whether they have not threatened to take said property herein described, out of the custody of said Sheriff of Avoyelles, where the same now is,* and said orders of said District Court sitting in bankruptcy, be reviewed by this Honorable Court and rescinded, and that said defendants may be restrained and prohibited by your Honorable Court, by a writ of injunction from proceeding under said decree and from taking possession of said property or interfering with the same, and that they be directed, if they have any pretentions to any portion of residuary interest of said bankrupt, in said property under seizure, to make themselves parties to said suit, in said Parish of Avoyelles, were the cause can be heard contradictorily with said Fuller, and to assert said right in said District Court of the Parish of Avoyelles, and that your orator be permitted without hindrance of said assignees to detain and subject said property to the payment of said rent due and to fall due under said contract of lease, and should any of said property fall into the hands of said Knox and Norton, assignees, that they be ordered to deliver the same to your orator, and for such other relief in the premises as the case shall require, and to your honors shall seem meet.

May it please your honors to grant unto your orator, not only the most gracious writ of injunction issuing out of and under the seal of this Honorable Court to be directed to said Henry Knox and E. E. Norton to ejoine, etc., restrain them from taking any proceedings upon said decree, upon said rule, and from intermeddling and interfering with the possession of said property, and the proceedings of said District Court, in and for said Parish of Avoyelles, touching any of the matters in question, but also, the most gracious writ of subpœna of the United States of America, to be directed to the said Henry Knox and E. E. Norton, and the rest of their confederates, when discovered, thereby commanding them and every of them at a certain day, and under certain pain therein to be specified, personally to be, and appear before your honors, in this Honorable Court, and then and there to answer all and singular the premises and to stand to perform and abid such order and decree therein, as to your honors shall seem meet, and your orator shall ever pray.

By RACE FOSTER AND
E. T. MERRICK,
Solicitors for Plaintiff.

NOTE.

Both defendants are required to answer said first and second interrogatories.

Edwin T. Merrick one of the solicitors of the plaintiff and complainant, Thomas D. Marshall, personally appeared and made oath that said Marshall is absent from the city of New Orleans, at his residence in said Parish of Avoyelles, more than two hundred miles distant; that he, said Merrick has said, read, said bill subscribed by his said firm, and knows the contents thereof, and that the same is true according to the best of his information and belief.

(Signed), E. T. MERRICK.

Sworn to and subscribed, April 29th, 1868, before me

F. B. VINOT,
DEPUTY CLERK.

THOS. B, MARSHALL,
vs.
KNOX & NORTON.

Rule of District Court in Bankruptcy, 26 Nov., 1867, referred to in complainants brief, and on file:

"Ordered that E. E. NORTON be and he is hereby ap-
" pointed official assignee in Bankruptcy of this Court, to
" whom upon an adjudication in Bankruptcy a surrender
" of all assetts and estate shall be made in all cases.
" And he is hereby designated as the person to be ap-
" pointed assignee in all cases where appointments of
" of assignees are to be made under Sec. 13 of the Act,
" and he shall be appointed "additional assignee" in all
" cases where the assignee elected by the creditors shall
" be approved by the Judge, unless otherwise specially
" ordered."

2d WARD.

2d PRECINCT.

Parish of Orleans.

2d WARD.

2d PRECINCT.

Parish of Orleans.